8105.1/988

DLAM 8105.1

(THIS REPRINT INCLUDES CHANGES 1 THRU 6)

DEPARTMENT OF DEFENSE

DEFENSE
OGISTICS
AGENCY

CONTRACT ADMINISTRATION MANUAL FOR CONTRACT ADMINISTRATION SERVICES

Cameron Station,
Alexandria, Virginia 22304-6100

December 1984

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CHANGE NO. 6
DLAM 8105.1

CONTRACT ADMINISTRATION MANUAL
FOR
CONTRACT ADMINISTRATION SERVICES

The notes and filing instructions appearing below should be read completely before inserting new pages or removing old pages of this manual.

Notes Regarding Substantive Changes

Suspected Fraud Detection and Reporting. Subpart 3-4 is added concerning contractor programs to improve compliance with laws, regulations, and contract commitments.

Restricted Purchases for Preservation of the Domestic Industrial Base. Part 8.2 is expanded to add additional references and to clarify the policy relative to the industrial mobilization base.

Determining Financial Capability. Subpart 9.1-3c is revised to include procedures in evaluating the contractor's method of contract financing during the preaward survey.

Spare Parts Pricing Reviews/Bill of Material Review. Subpart 15.805-8d(3)(4) is added to provide guidance to the ACO or Price Analyst when performing spare parts pricing or bill of material reviews.

Review and Evaluation of Subcontract Proposals. Subpart 15.805-10 is expanded to remind contract administration personnel to assure contractors are aware of their responsibilities and provide analyses of subcontractor data as part of their own proposals.

Prenegotiation Objectives. Part 15.807 is expanded to provide guidance when there is disagreement between the ACO and the reviewing/approval official. Also additional factors are specified when preparing prenegotiation objectives.

Time and Materials Contracts. Part 16.601 is expanded to state that for T & M orders placed under BOAs or IDTCs, the withholding provisions of FAR 52.232-7 should be applied per individual order not to the aggregate total of all T & M orders issued under the basic instrument.

Authority to Issue Orders Under any Overhaul Maintenance and Repair (OM&R) BOAs. Subpart 16.703-7a (6) is added to provide guidance in this area.

Customs and Duties. Part 25.6 has been rewritten to improve clarity and readability.

Patents. Part 27 has been rewritten to improve clarity and readability.

Contractor Insurance Pension Review Program. Part 28.3 is revised to include guidance concerning: (1) the "Notice of Intent to Disallow or not Recognize Costs;" (2) a listing of contractors with defined benefit plans, and (3) pension plan terminations.

Cost Accounting Standards (CAS). Part 30 has several changes including procedures to follow when issues require policy guidance from HQ DLA-A.

Advance Agreements IR&D and B&P Expense. Part 31.109 is expanded to include additional guidance and to provide the ACO the means to obtain non-mandatory B&P and IR&D advance agreements in a more timely fashion.

Contractor Employee Compensation Reviews. Part 31.205 is revised in its entirety to provide updated guidance concerning contractor employee compensation reviews.

Corporate Administrative Contracting Officer (CACO). Part 42.6 is expanded to provide that the CACO activity report will include appropriate coverage of unresolved contract audit reports over 6 months old.

Establishing Overhead Rates. Part 42.7 is revised to clarify coverage concerning establishing overhead rates.

Monitoring Contractors' Cost. Part 42.70 is revised to clarify coverage concerning monitoring of contractors' costs.

Voluntary Refunds. Part 42.71 is revised to expand guidance concerning the processing of voluntary refunds.

Anticipated or Actual Delay in Delivery or Performance. Part 42.11 is revised to delete references to DLA Form 1654 and to provide coverage on DD Form 375-2 or electronically transmitted Revised Delivery Forecast (RDF).

Contractor Acquisition of Automatic Data Processing Equipment (ADPE). Part 42.13 is revised to provide additional guidance and to clarify how automatic data processing reviews of multidivision contractors should be handled.

Contractor Automatic Data Processing (ADP) Software Cost. Part 42.14 is added to provide guidance concerning automatic data processing and software costs.

Contractor Purchasing System Reviews (CPSR). Part 44.3 provides revised coverage such as the "Notice of Intent to Disallow or not Recognize Costs" and subcontract kickbacks.

Contract Management Boards of Review. Subpart 90.16-11 is added to provide that a separate Board case file is retained for each case reviewed by the Board.

Appendix A - ADP Applications. Appendix A is deleted in its entirety since appropriate ADP coverage is contained in DLAM 8000.3, MOCAS Users Manual for Contract Administration, and all Regions are using MOCAS Phase II programs.

Make the following changes:

a. Page xiii:

1. Second line from bottom of page: Delete in entirety.

2. Last line from bottom of page: Delete "419" and substitute "365".

b. Page 65: Delete "15.805-20" and substitute "15.805-21".

c. Page 66: Delete "15.805-21" and substitute "15.805-22".

d. Page 276.1 renumber to 276.2.

e. Renumber pages 419 thru 432 to 365 thru 388 as necessary.

f. Remove pages listed below and insert revised pages. Changes are indicated by marginal lines.

Remove Old	Insert New	Check When Made
vii thru xii	vii thru xii	
1 thru 8	1 thru 8	
17 thru 22	17 thru 22	
25	25	
27 thru 36	27 thru 36	
45 thru 48	45 thru 48	
51 and 52	51 and 52	
55 thru 58	55 thru 58	
61 thru 64	61 thru 64	
66.1 thru 72	66.1 thru 72	
77 and 78	77 and 78	
81 and 82	81 and 82	
85 thru 88	85 thru 88	

Remove Old	Insert New	Check When Made
91 thru 93	91 thru 93	
97	97 and 98	
105 and 106	105 and 106	
107	107	
111 thru 127	111 thru 123	
129 thru 136	129 thru 136	
141 thru 151	141 thru 151	
153 thru 155	153 thru 155	
161 thru 165	161 and 162	
185	185 and 186	
195 thru 197	195 thru 197	
203 thru 206	203 thru 206	
209	209	
227 thru 241	227 thru 240	
245 thru 264	245 thru 264.2	
271 and 272	271 and 272	
275 and 276	275 thru 276.1	
279 and 280	279 thru 280.1	
285 thru 294	285 thru 294	
299 thru 301	299 thru 301	
307 thru 310.2	307 thru 310.3	
319 thru 324.5	319 thru 323.2	
327 and 328	327 and 328	
333	333	
342.1	342.1	
343	343	
353 thru 358	353 thru 358	
364.3 and 364.4	364.3 and 364.4	
365 thru 417	------	
------	367 thru 372	

g. This change sheet will be filed in front of the publication for reference purposes, after changes have been made.

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Colonel, USA
Staff Director, Administration

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7 Jun 88

CHANGE NO. 5
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CONTRACT ADMINISTRATION MANUAL
FOR
CONTRACT ADMINISTRATION SERVICES

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Notes Regarding Substantive Changes

Prenegotiation Objectives. This new Part 15.807 is added to implement recent changes to DFARS 15.807 which require both documentation and review/approval of prenegotiation objectives, including objectives formulated to resolve postaward contract audit reports.

Price Negotiation Memorandum. Part 15.808 is changed to reflect the clarified coverage in DFARS 15.808 relative to documentation of the principal factors related to the disposition of postaward contract audit reports.

Contract Audit Followup. Part 90.01 is revised in its entirety to implement Department of Defense Directive 7640.2, Policy for Followup on Contract Audit Reports. The following is a summary of the changes/additions:

a. Eliminates any perception that the contracting officer's authority is being unduly restricted.

b. Replaces the DISAO by relying on DoD component procedures for documentation and review of the contracting officer's prenegotiation objectives.

c. Eliminates DCAA oversight responsibilities.

d. Raises the costs questioned/cost avoidance threshold from $50,000 to $100,000 for designated contract audit reports. Internal Controls Review and Operations Audits are now subject to the dollar threshold.

e. Adds Part E, "Reports Involved in Criminal Investigation" to the Status Report on Specified Contract Audit Reports (Report Control Symbol DD-IG(SA)1580) - Open Reports.

Make the following changes:

a. Page xi, add "15.807", "Prenegotiation Objectives", and "66.1" in proper numerical sequence.

b. Remove pages listed below and insert revised pages.

Remove old	Insert New	Check When Made
None	66.1 thru 66.8	
67 and 68	67 and 68	
319 thru 324.2	319 thru 324.5	

c. This change sheet will be filed in front of the publication for reference purposes, after changes have been made.

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2 Dec 87

CHANGE NO. 4
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CONTRACT ADMINISTRATION MANUAL
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CONTRACT ADMINISTRATION SERVICES

The notes and filing instructions appearing below should be read completely before inserting new pages or removing old pages of this manual.

Notes Regarding Substantive Changes

First Articles. This revision replaces previous 9.3 in its entirety and adds coverage on ACO approval of first articles as promulgated by DLA-AC Letters No. 86-3 and 86-47.

Variation in Quantity. 12.4-4 clarifies the ACO responsibility to amend the contract if a lesser quantity is accepted by the PCO and the PCO advises the ACO in writing that the contract is considered complete based on the lesser quantity.

Contract With Requirements for Provisioned Items. 17.4 is changed to reflect revised coverage relative to contracts with requirements for provisioned items.

Contract Awarded by the Small Business Administration. 19-4b is expanded to give examples of the type of correspondence the ACO should forward to the SBA Contracting Officer.

Safety Precautions For Ammunition Explosive and Dangerous/Hazardous Materials. Part 23.3 is revised in its entirety to reflect updated guidance and to accommodate changes in DFARS Part 23 and 52.

Price Negotiation Memorandum. 15.808-3 is expanded as a result of the implementation of the revised DoD Directive 7640.2, Policy for Followup on Contract Audit Reports.

Forward Pricing Rate Recommendations. 15.809-4, 15.809-5, and 15.809-6 are revised to facilitate the establishment and use of Forward Pricing Rate Recommendations.

Administration of Basic Ordering Agreements and Indefinite Delivery Type Contracts. 16.703 is revised to reflect some significant changes regarding orders under BOAs provided in the Competition in Contracting Act and in Federal Acquisition Circular 84-5.

Customs and Duties. Part 25.6 is changed to reflect revised coverage relative to customs and duties.

Contractor Employee Compensation System Review. Part 31.205 is revised in its entirety to (i) incorporate new program requirements which result from the under Secretary of Defense Research and Engineering designation of DLA as the DoD Executive Agency responsible for performing all CECSRs within DoD and (ii) expand coverage to assure uniform and consistent performance of CECSRs.

Bankruptcy Reporting. Part 32.671 adds the cognizant DCAA auditor as a party to be notified in cases of financial difficulties and actual bankruptcy.

Performance of Contract Administration Services on Military Installations. Part 42.270 is added to provide guidance on the performance of contract administration services on military installations.

Postaward Orientation of Contractor. Part 42.5 is revised to provide that the ACO should consider holding a postaward orientation conference for contracts containing the preference for privately-owned U.S. Flag Commercial Vessels clause, classified contracts, or contracts containing AA&E provisions.

Monitoring Contractors' Costs. Part 42.70 is changed to (i) more fully describe the responsibilities of the individual cost monitoring team members and (ii) provide a format for the annual Cost Monitoring Plan.

Supplemental Agreement. Part 43.103 is revised to provide additional guidance concerning supplemental agreements.

Contractor Purchasing System Reviews. Part 44.3 is revised to provide for increased emphasis on review of subcontractor competition negotiations.

Transfer and Retention of Government Property in Possession of Contractors. Part 45.605 is revised to provide that the ACO can only transfer Government property when authorized by the PCO. The change also deletes all references to a "systems" approach to property transfers.

Quality Assurance. New Part 46 replaces 46.104 and 46.407 in their entirety. New coverage has been added on contract quality requirements, the role of quality assurance, recoupment of reinspection costs and ACO procedures on quality deficiency/material deficiency report matters.

Contract Audit Followup. Part 90-09 is revised to explain when resolution is to be included as a critical element in the performance appraisals of contracting personnel and states that audit reports containing only positive findings and recommendations are not reportable.

Contract Management Board of Review. 90.16-6c is revised to require review by the Board where there are differences between the Contracting Officer and the auditor over disposition of specified types of audit reports.

Internal Controls Vulnerability Assessments. Part 90.18 is revised to state that contract administration areas have been assessed for high vulnerability and high susceptibility to fraud, waste, and abuse and based on this assessment there are no highly vulnerable areas at the agency-wide level.

End User Computer Systems Applications. Part 90.20 is added to describe the assistance available from the End User Computer Assistance Group (EUCAG) established at DCASR Chicago.

Administration of Contracts for Ship Construction and Boat Building. Part 90.21 is added to provide guidance for dealing with the specialized requirements of these contracts.

Appendix A - ADP Applications. Updates to appendix A have been made which included revisions to Norm Analysis, standard coded remarks, special contract provisions, and deletion of "SORP" reason for dormancy code.

Make the following changes:

a. Page 14, paragraph 4.8-7b, fifth line from top of page: Delete "may" and substitute "should".

b. Page 238, paragraph 42.7-11a., last line: Delete "$100,000" and substitute "$500,000".

c. Page 315, paragraph 48-3a., line 3 from bottom: Delete "thirty" and substitute "60 to 90".

d. Page 416, subparagraph A-702.6j, line 6: Delete "+" between 6a and 13 in the Lost Ratio Alternate Amount and substitute "=".

e. Remove pages listed below and insert revised pages. Changes are indicated by marginal lines.

Remove Old	Insert New	Check When Made
v thru xiii	v thru xiii	
15	15	
26.1	26.1	
35	35 and 36	
43	43	
47 thru 56	47 thru 56.1	
67	67 and 68	
71 and 72	71 and 72	
83 and 84	83 and 84	
95 thru 97	95 thru 97	
101 thru 106	101 thru 106.1	
115 thru 121	115 thru 121	
161 thru 165	161 thru 165	
199	199	
NONE	218.1	
219 and 220	219 and 220	
225	225	
229 and 230	229 and 230	
239 and 240	239 and 240	
243 thru 250	243 thru 250.1	
261 thru 270	261 thru 270	

Remove Old	Insert New	Check When Made
275 thru 278	275 thru 278	
293 and 294	293 and 294	
297 and 298	297 and 298	
303	303	
307 thru 309	307 thru 310.2	
319 thru 324.8	319 thru 324.2	
327 and 328	327 and 328	
NONE	342.1	
349	349	
353 and 354	353 and 354	
361	361	
NONE	364.1	
NONE	364.3 and 364.4	
369 thru 377	369 thru 377	
381 and 382	381 and 382	
389 and 390	389 and 390	
395 and 396	395 and 396	
407 and 408	407 and 408	
419 thru 432	419 thru 432	

f. This change sheet will be filed in front of the publication for reference purposes, after changes have been made.

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17 Nov 86

CHANGE NO. 3
DLAM 8105.1

CONTRACT ADMINISTRATION MANUAL
FOR
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Notes Regarding Substantive Changes

Contract Audit Followup: This Change 3 replaces Part 90.01, Contract Audit Followup, in its entirety. This revision implements Department of Defense Directive 7640.2, Policy for Followup on Contract Audit Reports. The following is a summary of the changes/additions included in this revision:

a. Requires performance appraisals of appropriate acquisition officials to reflect the degree of effectiveness in resolving contract audits.

b. Requires the training of acquisition personnel in contract audit followup.

c. Expands the definition of "questioned costs" to include "unsupported" costs, "qualified" costs and/or "adverse opinion amounts" unless such amounts are disclaimed by the auditor because of requested assist audits or need for technical evaluation.

d. Requires the reporting of all audit reports on final indirect cost rates forwarded to the contracting officer for resolution and disposition when the contract auditor and the contractor are unable to reach a final settlement.

e. Clarifies that should any nonreportable audit report contain reportable findings and recommendations, it should not be treated as a reportable audit. If the ACO considers it appropriate, he should request the DCAA to issue a separate audit report addressing the reportable issues in detail.

f. Requires specific documentation of resolution action by the contracting officer and emphasizes that this is a prenegotiation act.

g. Expands the requirement for DISAO review to include a review of forward pricing and preaward audit reports where the audit report is disclaimed or highly qualified, or contains an adverse opinion stating that the auditor does not consider the contractor's proposal to be acceptable as a basis for price negotiation.

h. Requires DISAO review of ACO differences with auditor determined final indirect cost rate disagreements when the differences between the contracting officer and the auditor total at least $25,000.

i. Changes the requirements for DISAO review of reports covering incurred costs, settlement of final indirect cost rates, final pricings, terminations, equitable adjustment claims and hardship claims. Rather than being required when the total costs questioned by the auditor equal $50,000 or more, and the differences between the contracting officer and the auditor total at least 5 percent of the costs questioned, the review is now required when the differences between the contracting officer and the auditor equal at least $25,000.

j. Changes the point at which disposition takes place for audit reports on which the contracting officer issues a final decision. Rather than waiting to close out an audit report until a decision has been rendered on an appeal made to the ASBCA or U.S. Claims Court, the audit report remains open until 90 days have elapsed without appeal to the ASBCA. Once the 90 days have elapsed, the report is to be closed; however, if an appeal is made to the U.S. Claims Court within 12 months, the report is to be reinstated as an open audit report in litigation.

k. Expands the list of circumstances that denote disposition of contract audit reports to include the instance when the ACO has negotiated all local issues for divisional overhead audit reports, a written agreement detailing the results of the negotiations has been signed by the ACO and the contractor, and distribution has been made to DCAA.

l. Changes the designation of the Executive Director, Contract Management, HQ DLA (DLA-A) from "Senior Management Official" to "Contract Audit Followup Official."

m. Expands requirements for DCAA to monitor all final disposition and negotiation memoranda.

n. Requires the addition of a "Resolution Target Date" on the Semiannual Status Report on Specified Contract Audit Reports (RCS DD-IG(SA)1580)-OPEN REPORTS.

o. Clarifies that when a report is superseded, replaced or incorporated into a new report, cost questioned and sustained should be reported as "zero" on the Semiannual Status Report on Specified Contract Audit Reports-CLOSED REPORTS. Also, in such cases, the new and superseded audit report numbers and dates must be included in the report.

p. Adds Part D "Reports in Litigation" to Status Report on Specified Contract Audit Reports (Report Control Symbol DD-IG(SA)1580)-OPEN REPORTS.

Make the following changes:

a. Remove pages 319 thru 324.1 and insert revised pages 319 thru 324.8.

b. This change sheet will be filed in front of the publication for reference purposes, after changes have been made.

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21 Jul 86

CONTRACT ADMINISTRATION MANUAL
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Notes Regarding Substantive Changes

Competition Advocacy. 6.5 is added to provide direction and guidance concerning competition advocacy. The change focuses on DLA (CAS) competition advocacy actions and provides implementation guidance.

Evaluating Contractor Price Proposals. 15.805.3 is changed to reflect the use of microcomputers in evaluating contractor price proposals rather than the COPPER IMPACT timeshare computer network.

Environmental Protection. 23.1 has been expanded to address general responsibilities related to environmental matters.

Safety Precautions for Ammunition, Explosives and Dangerous Hazardous Materials. 23.3 adds numerous safety-related references and spells out the role of the ACO in directing contractor corrective action on safety matters.

Rights in Technical and Other Data and Copyright. 27.4 is revised in order to alert ACOs of their role in the surveillance of restrictive markings on technical data.

Contracts for Clothing and Textile Items. 42.5-5p(5) is added to provide guidance that when the CAO determines that a postaward conference is required, it should also be determined whether representation from the Military Service which has responsibility for the specification for the item would be appropriate and helpful in conduct of the postaward conference.

Delay Reports. 42.11d is added to specify that delay reports will be promptly forwarded to the appropriate acquisition activity representative.

ADPE Reviews. 42.13-4 is changed to provide additional guidance for ACOs and ADPE review team members for conducting ADPE reviews.

Supporting Contract Administration. 42.204 is revised in its entirety to improve the clarity and readability. Language has been added to the effect that prime contractors are to be made aware that supporting contract administration requests are made only to meet the Government's needs and not to relieve contractors of any of their management responsibilities.

Special Emphasis Material Action and Reporting Technique (SMART) Program. 90.10 is deleted since the SMART Program has been replaced by contract management alerts in DLAR 8300.4, Contract Management Alerts.

Diminishing Manufacturing Sources and Material Shortage (DMSMS) Program. 90.19 is added to cover the ACO's responsibility under the DMSMS Program and also makes clear what roles the IS and QAR play in the Program.

Appendix A-ADP Applications. Changes have been made to delete Phase II, Segment I/X references. The new MOCAS users manual, DLAM 8000.3, has been distributed to the Regions. Those Regions that currently have Phase II, Segment I/X programs should use DLAM 8000.3. All other Regions should continue to use Appendix A until Segment I/X programs are operational at their locations.

Make the following changes:

a. Renumber the following pages as indicated:

	Check When Made
345 to 343.	
347 to 345.	
349 and 350 to 347 and 348.	
353 and 354 to 351 and 352.	
355 and 356 to 353 and 354.	
361 to 359.	

b. Remove pages listed below and insert revised pages. Changes are indicated by marginal lines.

Remove Old	Insert New	Check When Made
v thru ix	v thru ix	
xi thru xiii	xi thru xiii	
9 and 10	9	
13 and 14	13 and 14	
NONE	26.1	
29 thru 34	29 thru 34	
47 thru 50	47 thru 50	
57 thru 62	57 thru 62	
65 and 66	65 and 66	
87 and 88	87 and 88	
113	113	
115	115	
129	129	
213 thru 215	213 and 214	
223 thru 225	223 thru 225	
237 and 238	237 and 238	
243 and 244	243 and 244	
255 thru 257	255 thru 257	
261 thru 264	261 thru 264	

Remove Old	Insert New	Check When Made
305 and 306	305 and 306	
343	NONE	
351	349	
357 thru 360	355 thru 358	
363	361	
NONE	363	
369 and 370	369 and 370	
375 and 376	375 and 376	
379	379	
383 and 384	383 and 384	
395 and 396	395 and 396	
401 and 402	401 and 402	
419 thru 431	419 thru 432	

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27 Aug 85

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CONTRACT ADMINISTRATION MANUAL
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Notes Regarding Substantive Changes

Selection, Appointment, and Termination of Appointment of Contracting Officers. 1.603 is changed to clarify that successful candidates for Contracting Officer positions must be capable of obtaining a warrant in order to perform. Also the change specifies a floor on the grade levels below which Contracting Officer warrants should not be granted.

Debarment, Suspension, and Ineligibility. 9.4 is modified to require prompt dissemination of debarred contractor listings to cognizant ACOs and notification of cognizant PCOs when a contractor is ineligible for future contracts.

Criteria for Establishing and Classifying Price and Other Cases. 15.805-5 is revised because of application of Special Purpose Data Standards to the case classification criteria.

DLA Form 715, Evaluation of DCAS Pricing Support. 15.805-13 is changed to require the price analyst to provide the ACO with a copy of DLA Form 715 along with the pricing report.

Warranty Cost Data. 16.703-7b(3) establishes the means by which ACOs will furnish PCOs warranty cost data under orders being definitized by ACOs.

ACO and QAR Interrelationship. 32.590-4 and 46.104.3 are amended to emphasize the interrelationship between the efforts of the QAR and the ACO in managing the contractor's financial and quality assurance relationships with the Government. These changes highlight the financial effects of contractor quality deficiencies, and the appropriate ACO response to these financial effects.

Subordination Agreements. 32.595-4h is added to provide information as to the distribution of postaward subordination agreements.

Delegation to Overseas Activity. 42.204-6a(5) is added to provide detailed guidance to the ACO in the case of a foreign government performing support administration on a reimbursable basis.

Corporate Administrative Contracting Officer. 42.6 is revised to delineate the information that should be included in the CACOs quarterly activity reports. The revision clarifies that CACOs should include information in their reports on actions taken pursuant to the Contract Audit Followup Program.

Documenting ACO Determined Final Overhead Rates. 42.7-7 and 90.16-6 are changed to establish the requirement for ACOs and DACOs to complete divisional final overhead rate negotiations without waiting for corporate negotiations to be finalized and to submit those proposed divisional settlements to the Contract Management Board of Review.

Consent to Subcontracts. 44.2-3 is revised to provide additional guidance concerning placement of certain subcontracts for major weapon systems contracts.

Contractor Purchasing Systems Reviews. a. 44.3-2c is added to require the CPSR team to ensure that the contractor's top management understands that the prime contractor bears full responsibility for the goods and services provided by their subcontractors and vendors, and the presence of a Government review activity at the subcontractor's plant does not relieve the prime contractor of its responsibility with respect to subcontracts.

b. 44.3-4c(3) is added to emphasize that consent to certain subcontracts may be required in exceptional circumstances, even though the contractor's purchasing system has been approved.

Contract Audit Followup. 90.01 is revised to improve the definitions of terms used, place additional emphasis on resolution of differences between Contracting Officers and auditors, and provide additional information on the reporting requirement associated with Contract Audit Followup.

Administration of Service Contracts for the Operation of Government-Owned Contractor-Operated (GOCO) Defense Fuel Support Points. 90.09 is deleted since responsibility for administration of GOCO fuel points has reverted to DFSC for new contracts.

Board of Review. 90.16-6 is expanded to add the requirement that when there has been a change in policy or law, any previously reviewed case that has not yet been finalized should be returned to the Board for further review in light of the policy changes.

Internal Controls Vulnerability Assessments. 90.18 is revised to provide a clearer statement relative to internal controls vulnerability assessments.

Make the following changes:

a. Renumber the following pages as indicated:

	Check When Made
347 to 343.	________
349 to 345.	________
351 to 347.	________
353 and 354 to 349 and 350.	________
365 to 361.	________
373 thru 378 to 369 thru 374.	________

	Check When Made
383 to 379.	
385 thru 397 to 381 thru 393.	
399 thru 401 to 395 thru 397.	
403 and 404 to 399 and 400.	
405 and 406 to 401 and 402.	
409 thru 421 to 405 thru 417.	

b. Remove pages listed below and insert revised pages. Changes are indicated by marginal lines.

Remove Old	Insert New	Check When Made
vii and viii	vii and viii	
xi thru xiii	xi thru xiii	
3	3	
19 and 20	19 and 20	
27 and 28	27 and 28	
29 and 30	29 and 30	
33 and 34	33 and 34	
37 and 38	37 and 38	
47 and 48	47 and 48	
51 thru 54	51 thru 54.1	
61 and 62	61 and 62	
69 and 70	69 and 70	
93	93	
97	97	
111	111	
117 thru 121	117 thru 121	
123 and 124	123 and 124	
171 thru 173	171 thru 173	
175 and 176	175 and 176	
177 thru 180	177 thru 180	
187 and 188	187 and 188	
191	191	
193 and 194	193 and 194	
197	197	
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379 thru 381	375 thru 377	
407 and 408	403 and 404	
423 thru 435	419 thru 431	

c. This change sheet will be filed in front of the publication for reference purposes, after changes have been made.

BY ORDER OF THE DIRECTOR

for

GEORGE A. WHITE
Colonel, USAF
Staff Director, Administration

DISTRIBUTION
62; O
COORDINATION: DLA-AE, DLA-AF, DLA-AM, DLA-AO, DLA-AP, DLA-CF, DLA-KS, DLA-LR, DLA-LP

DLAM 8105.1

DEFENSE LOGISTICS AGENCY
HEADQUARTERS
CAMERON STATION
ALEXANDRIA, VIRGINIA 22314

DLA-AC

11 Dec 84

FOREWORD

(Supplementation is permitted by the DCASRs.)

The principal objectives of Contract Administration Services are to ensure that only materials and services of the required quality are provided to end item users on time and at reasonable cost to the Government; perform such additional authorized contract administration tasks as may be requested by contracting activities and program managers; and achieve uniformity in dealing with industry in the administration of Government contracts. The procedures in this manual have been designed to aid in the accomplishment of these objectives. These procedures reflect internal DLA guidance. To provide the full scope of procedural guidance, this manual should be used in conjunction with the FAR and DFARS.

This edition is a complete revision of the May 1982 edition and changes thereto. The primary purpose of this revision is to include FAR and DFARS references and to renumber the parts in accordance with the FAR and DFARS numbering system. DAR references have been retained for information purposes. Substantive changes to the text are covered by notes listed on page iii.

A copy of each supplement issued by a DCASR will be forwarded to HQ DLA, ATTN: DLA-AC, for review and possible later incorporation into this manual. Users of this manual are encouraged to submit recommended changes and comments to improve it, through channels, to HQ DLA, ATTN: DLA-AC.

BY ORDER OF THE DIRECTOR

for

GEORGE A. WHITE
Colonel, USAF
Staff Director, Administration

DISTRIBUTION
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COORDINATION: DLA-KS, DLA-LR,
DLA-LP

This DLAM supersedes DLAM 8105.1, 3 May 82, and Changes 1 thru 4.

Notes Regarding Substantive Changes

Postaward Financial Surveillance Procedures. 9.1-6 is changed to emphasize the importance of early detection and immediate reporting to the ACO of contractors encountering financial problems.

Additional ACO Responsibilities. 16.703-7a.(5) is added concerning the ACO's responsibility regarding questionable requests to issue orders that involve a written D&F, or instructions for use of a CD&F received from the cognizant PCO.

Duty and Customs. 25.6, Duty and Customs, has been completely rewritten to incorporate guidance relative to the new FAR and DFARS policy and contract clauses. It should be reviewed carefully by all ACOs and CAs, as it contains significant changes in the requirements for administering duty-free entry provisions.

Suspend or Reduce Payments. 32.590-4e is revised to include guidance concerning suspension/reduction for reasons contained in the progress payment clause.

Progress Payment Request Forms. 32.591-6 is added to provide additional guidance concerning the submission of progress payment request forms from the contractor.

Report of Adverse Developments. 32.593-5 is revised to include expanded guidance concerning the ACO's responsibility to issue a report on contractors encountering financial problems. Also, the format and distribution of the report are prescribed.

Terminated Contracts. 32.593-9 provides guidance concerning processing of progress payments under terminated contracts.

Assignment of Claims. 32.8 is added to provide guidance concerning assignment of claims.

Contractor Cost Data Reporting. 90.07 contains revised material resulting from the revision of DoD Instruction 7000.11, Contractor Cost Data Reporting.

Internal Controls Vulnerability Assessments. 90.18 is added to provide guidance on the Internal Control Review Program and identifies those contract administration areas that are vulnerable or have high susceptibility to fraud, waste, and abuse, and which should be subjected to continuing review.

GLOSSARY OF ABBREVIATIONS USED IN THE TEXT

AA&E	Arms, Ammunition and Explosives
ACD	Administrative Commitment Document
ACMR	Annual Cost Monitoring Report
ACO	Administrative Contracting Officer
ACRN	Accounting Classification Record Number
ADP	Automatic Data Processing
ADPE	Automatic Data Processing Equipment
AFSC	Air Force System Command
ALC	Air Logistics Center
AMIS	Acquisition Management Information System
ASBCA	Armed Services Board of Contract Appeals
ASI	Amended Shipping Instruction
ASPM	Armed Services Procurement Manual
ASPPO	Armed Services Production Planning Officer
ASRSC	Armed Services Research Specialist Committee
B&P	Bid and Proposal
BBS	Bulletin Board Service
BEP	Basic Emergency Plan
BOA	Basic Ordering Agreement
BPA	Blanket Purchasing Agreement
C&T	Clothing and Textile
CA	Contract Administration
CAC	Contract Audit Coordinator
CACO	Corporate Administrative Contracting Officer
CAD	Contract Administration Data Reference List
CAIG	Cost Analysis Improvement Group
CAO	Contract Administration Office
CAP	Contractor Acquired Property
CAR	Contract Administration Report
CAS	Cost Accounting Standards
CASB	Cost Accounting Standards Board
CCDR	Contract Cost Data Reporting
CCN	Contract Completion Notice
CD&F	Class Determination and Findings
CDRL	Contract Data Requirements List
CEC	Contractor Employment Compliance
CECSR	Contractor Employee Compensation System Reviews
CEMR	Contractor Estimating Methods Reviews
CEOS	Corporate Equal Opportunity Specialist
CER	Cost Estimating Relationship
CFSR	Contract Fund Status Report
CIP	Contractor Improvement Program
CIPR	Contractor Insurance/Pension Review
CIR	Cost Information Reports
CJ&A	Class Justification and Approval
CLIN	Contract Line Item Number
CLR	Contingent Liability Record
CM	Contract Management
CMP	Cost Monitoring Program
CMR	Contract Management Review
CMS	Cost Monitoring Specialist
CO	Contracting Officer

COF	Contract Operations File Element
COMSEC	Communication Security
CONUS	Continental United States
COPPER IMPACT	Improve Modern Pricing And Costing Technique
CPIF	Cost Plus Incentive Fee
CPR	Cost Performance Report
CPSR	Contractor Purchasing Systems Review
CSA	Compensation System Analyst
C/SCSC	Cost/Schedule Control Systems Criteria
C/SPCS	Cost/Schedule Planning Control Specification
C/SSR	Cost/Schedule Status Report
C/STCS	Cost/Schedule Technical Control System

DAC	Defense Acquisition Circular
DACO	Divisional Administrative Contracting Officer
DAR	Defense Acquisition Regulation
DARC	Defense Acquisition Regulatory Council
DARCOM	United States Army Materiel Development and Readiness Command
DARTS	Destination Acceptance Reporting and Tracking System
D&B	Dun & Bradstreet
D&F	Determination & Findings
DBMS	Data Base Management System
DCAA	Defense Contract Audit Agency
DCAS	Defense Contract Administration Services
DCASMA	Defense Contract Administration Services Management Area
DCASPRO	Defense Contract Administration Services Plant Representative Office
DCASR	Defense Contract Administration Services Region
DCEC	Directorate of Contractor Employment Compliance
DCN	Document Control Number
DFARS	DoD FAR Supplement
DFR	Defense Fuel Region
DFSC	Defense Fuel Supply Center
DFSP	Defense Fuel Support Point
DGSC	Defense General Supply Center
DIPEC	Defense Industrial Plant Equipment Center
DIS	Defense Investigative Service
DISAO	Designated Independent Senior Acquisition Official or Board
DISCO	Defense Industrial Security Clearance Office
DISP	Defense Industrial Security Program
DLA	Defense Logistics Agency (formerly Defense Supply Agency)
DLAM	Defense Logistics Agency Manual
DLAR	Defense Logistics Agency Regulation
DMSMS	Diminishing Manufacturing Sources and Material Shortages Program
DoD	Department of Defense
DoE	Department of Energy
DoL	Department of Labor
DPSC	Defense Personnel Support Center
DS	Disclosure Statement
DSA	Defense Supply Agency (now Defense Logistics Agency)
DS&FM	Directorate of Systems and Financial Management
DTIC	Defense Technical Information Center
DUNS	Data Universal Numbering System

E	Engineer
ECD	Estimated Completion Date
EEO	Equal Employment Opportunity
ECP	Engineering Change Proposal

ELIN	Exhibit Line Item Number
EPA	Economic Price Adjustment
EOs	Engineering Orders
EOS	Equal Opportunity Specialist
EUCAG	End User Computing Assistance Group
FAD	Final Acceptance Date
FAR	Federal Acquisition Regulation
FBI	Federal Bureau of Investigation
FDD	Final Delivery Date
FOUO	For Official Use Only
FPI	Fixed Price Incentive
FFP	Firm Fixed Price
FMS	Foreign Military Sales
FPR	Fixed Price Redeterminable
FPRA	Forward Pricing Rate Agreements
FPRR	Forward Pricing Rate Recommendation
G&A	General and Administrative
GAO	General Accounting Office
GBL	Government Bill of Lading
GFM	Government Furnished Material
GFP	Government Fiscal Property
GFY	Government Fiscal Year
GOCO	Government Owned Contractor Operated
GP&RP	Government Production and Research Property
GSA	General Services Administration
HQ DLA	Headquarters, Defense Logistics Agency
ICMO	Indirect Cost Monitoring Office
ILRO	Industrial Labor Relations Office
IPA	Independent Public Accountant
IPE	Industrial Plant Equipment
IPPP	Industrial Preparedness Program Planning
I/PS	Insurance/Pension Specialist
IR&D	Independent Research and Development
IRS	Internal Revenue Service
IS	Industrial Specialist
ISSA	Inter Service Support Agreement
J&A	Justification and Approval
MAAG	Military Assistance Advisory Group
MAAPR	Material Acceptance and Accounts Payable Report
MBE	Minority Business Enterprise
MCF	Master Contract File
MDR	Material Deficiency Report
M&O	Maintenance and Overhaul
MILSCAP	Military Standard Contract Administration Procedures
MILSTRIP	Military Standard Requisitioning and Issue Procedures
MIP	Management Improvement Program
MIR	Management Information Report
MOA	Memorandum of Agreement
MOCAS	Mechanization of Contract Administration Services
MOU	Memorandum of Understanding

MRL	Material Requirements List
NASA	National Aeronautics and Space Administration
NATO	North Atlantic Treaty Organization
NAVSEA	Naval Sea Systems Command
NCO	National Credit Office
NIS	Naval Investigative Service
NLA	Contract Closing Action Status
NLT	Not Later Than
NMT	Not More Than
NSN	National Stock Number
OASD	Office of the Assistant Secretary of Defense
OBL	Ocean Bill of Lading
ODO	Other Disbursing Office
ODSS	On Order Delivery and Schedule Summary
OEP	Office of Emergency Preparedness
OFCCP	Office of Federal Contract Compliance Programs
OISI	Office of Industrial Security International
OMB	Office of Management and Budget
OPE	Other Plant Equipment
OPI	Office of Primary Interest
OSD	Office of Secretary of Defense
OSHA	Occupational Safety and Health Administration
OSI	Office of Special Investigation
PA	Property Administrator
PADR	Production Administration Delinquent Report
PAOC	Postaward Orientation Conference
PAS	Preaward Survey
PCC	Production Control Clerk
PC&H	Packing, Crating, and Handling
PCO	Procuring Contracting Officer
PDM	Programmed Depot Maintenance
PERT	Progress Evaluation and Review Techniques
PIECOST	Probability of Incurring Estimated Cost
PIIN	Procurement Instrument Identification Number
PKX	Unclosed Contract Status
PKZ	Contract Closeout Extension
PK9	Contract Completion Statement
PLCO	Plant Clearance Officer
PMSO	Program Management Support Officer
PNM	Price Negotiation Memorandum
PO	Purchasing Office
PPSR	Progress Payment System Review
PQA	Procurement Quality Assurance
PRS	Provisioning Requirements Statement
PSA	Procurement Systems Analyst
PTD	Provisioning Technical Documentation
QAA	Quality Assurance Assistant
QAR	Quality Assurance Representative
QDR	Quality Deficiency Report
R&E	Review and Evaluation
RCMS	Region Cost Monitoring Specialist
RDT&E	Research, Development, Test and Evaluation

REPSHIP	Report of Shipment
RFP	Request for Proposal
RFQ	Request for Quotation
RIW	Reliability Improvement Warranty
SACAM	Ship Acquisition Contract Administration Manual
SADBU	Small and Disadvantaged Business Utilization
SBA	Small Business Administration
SB/EU	Small Business/Economic Utilization
SB/LSA	Small Business/Labor Surplus Area
SCA	Supporting Contract Administration
SDLM	Scheduled Depot Level Maintenance
SMO	Senior Management Official
SOP	Standard Operating Procedure
SPCC	Spill Prevention and Control and Countermeasure
SPIIN	Supplementary Procurement Instrument Identification Number
STE	Special Test Equipment
SUPSHIP	Navy Supervisor of Shipbuilding
TACP	Technical Analysis of Cost Proposal
TCO	Termination Contracting Officer
TO	Transportation Officer
TOA	Total Obligating Authority
TUO	Technology Utilization Officer
UPP	Unliquidated Progress Payments
USC	United States Code
VE	Value Engineering
VECP	Value Engineering Change Proposal
WBS	Work Breakdown Structure
WESP	War and Emergency Support Plan
ZIP	Zone Improvement Plan

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1.4 DEVIATIONS FROM FAR, DFARS, DoD DIRECTIVE, OR DLAM 8105.1

1.4-1 References

a. FAR 1.4, Deviations from the FAR.

b. DFARS 1.4, Deviations from the FAR.

1.4-2 Applicability. For the purpose of this Part, a deviation shall be considered to be any of the conditions described in FAR 1.401 (a) through (f), DFARS 1.402a (1) through (9) or any comparable variation to a requirement of this manual.

1.4-3 General. Innovation to attain desirable objectives will occasionally require deviations from FAR, DFARS, DoD Directive, and this manual. It is the responsibility of ACOs to request such deviations through command channels whenever they are in the best interest of the Government.

1.4-4 Procedures

a. *Deviations from FAR, DFARS, or DoD Directive*

(1) *Deviations, Affecting One Contract or Transaction.* In accordance with FAR 1.403 and DFARS 1.403, deviations from FAR, DFARS, or DoD Directive concerning contract administration functions which affect only one contract or transaction shall be made only after prior approval by the Executive Director, Contract Management, HQ DLA (DLA-A). Requests fully justifying the deviation shall be submitted to DLA-AC in duplicate.

(2) *Class Deviations.* In accordance with FAR 1.404 and DFARS 1.404, when it is known that a deviation from the FAR, DFARS, or a DoD Directive will be required affecting more than one contracting action on a permanent basis, an appropriate revision should be proposed to cover the matter. Class deviations shall be controlled and approved by the Assistant Secretary of Defense (Production and Logistics) and shall be processed in accordance with DFARS 1.404.

b. *Deviations from DLAM 8105.1*

(1) *Deviations Affecting One Contract or Transaction.* Deviations from this manual which affect only one contract or transaction (one-time deviation) may be approved by the Director, Contract Management of the DCASR provided: The circumstances justify the deviation; and copy of the approved deviation and supporting documentation is submitted to HQ DLA, ATTN: DLA-AC immediately following approval.

(2) *Deviations Affecting More Than One Contract or Contractor.* Deviations from this manual affecting more than one contract or contractor must be approved by DLA-A. Requests fully justifying the deviation shall be submitted to DLA AC in duplicate. The requesting activity will be notified when the request for deviation is approved/disapproved.

c. *Control of Deviations.* A control register will be maintained by DLA-AC to provide a record of each deviation granted by the Assistant Secretary of Defense (Production and Logistics), the DARC or DLA-A. Each deviation shall be assigned a control number, e.g., FAR Deviation 76-1, 76–2, DFARS Deviation 76-1, 76–2, or DLAM 8105.1 Deviation 76-1, 76-2. This number is to be cited in all references to the deviation.

NOTE:

For convenience in reading, standard pronoun gender usage will be followed in this DLAM. Where such pronouns as "he" or "his", etc., are used, it should be understood to include "she" or "hers," etc.

1.603 SELECTION, APPOINTMENT, AND TERMINATION OF APPOINTMENT OF CONTRACTING OFFICERS

1.603-1 References

a. FAR 1.603, Selection, Appointment and Termination of Appointment.

b. DFARS 1.603-3, Appointment.

1.603-2 Appointment Authority and Responsibilities of Appointees. Commanders and the Deputies of DCASRs, as the designees of the Executive Director Contract Management, DLA will select, appoint, and terminate appointment of contracting officers, in accordance with the provisions of FAR 1.603. When appointed as a contracting officer, the appointee will have the authority and general responsibility set forth in FAR, DFARS and DLA manuals. DCAS ACO and TCO warrants are to be granted only to individuals occupying or selected for existing positions at the GS-12 grade level and above; DCAS CACO warrants are to be granted only to individuals occupying or selected for existing positions at the GS/GM-13 grade level and above.

1.603-3 Procedures

a. The selection of a candidate for an ACO/TCO position should be contingent upon qualifying for a warrant as specified in FAR 1.603. The JOA should contain language to the effect that the successful candidate must be capable of obtaining a contracting officer warrant. Prior to final selection, a review will be made of the tentative selectees qualifications by the division chief, and/or the DCASMA/DCASPRO Commander.

b. The chief of the applicable functional element will attach to a resume of the applicant's qualifications (prepared on DLA Form 581, Contracting officer Appointment Documentation Sheet), a justification for the recommended appointment. The resume and justification will be forwarded to the CM Director, DCASR, through channels, for indorsement and submission to the Commander, DCASR.

c. If approved, the Commander or Deputy Commander, DCASR will issue the appointment document.

d. Only fully qualified professionals shall be appointed as ACOs and warrants should not proliferate the DCAS system and only be issued on an "actual need" basis. The issuing of unnecessary warrants not only detracts from their importance, but has the potential for unduly influencing the ACO in making the contractual decisions for which he is responsible. Accordingly, issuance of ACO warrants will be restricted to personnel who meet one or more of the following criteria:

(1) Are to be assigned one or more contracts for administration on a continuing basis.

(2) Are to be designated a CACO.

(3) Are designated to fill in during the temporary absences of assigned ACOs.

e. In all cases whether serving as a warranted ACO either permanently or in the temporary absence of the permanent ACO, the appointee must satisfy the considerations and meet the requirements of FAR 1.603-2.

f. In compliance with the Privacy Act of 1974 (Public Law 93-579), all material relating to the applicant's qualifications, i.e., resume, justification and associated personal information, should be prepared in original copies only (no duplicates). After processing through the appointing authority, this material shall be sent to the Personnel Office for retention in the employee's official personnel file. No material or records of a personal nature pertaining to the ACO appointment shall be maintained in the CM Directorate.

1.603-4 Termination of Appointment. Termination of appointment will be by letter, unless certificate provides for automatic termination (FAR 1.603-4).

3 SUSPECTED FRAUD DETECTION AND REPORTING

3-1 References

a. FAR 3, Improper Business Practices and Personal Conflicts of Interest.

b. DFARS 3, Improper Business Practices and personal Conflicts of Interest.

c. FAR 9.4, Debarment, Suspension, and Ineligibility.

d. DFARS 9.4, Debarment, Suspension, and Ineligibility.

e. DAR 1-111, Reports of Suspected Criminal Conduct, Noncompetitive Practices, Kickbacks, and Other Procurement Irregularities.

f. DAR 1-600, Debarment, Suspension, and Ineligibility.

g. DLAR 5705.1, Reporting of Security and Criminal Violations.

h. DLAR 5705.2, Criminal Investigative Support to the Defense Logistics Agency.

3-2 General. Fraud is a crime punishable by fine, imprisonment, or both. When a contractor fails to comply with contract terms, that noncompliance may be indicative of fraud. Government employees, because of their contact with contractors, play an important role in the prevention, detection, and reporting of fraud. This is especially true where a Government employee is a frequent visitor to or has a duty station in a contractor's plant. Careful attention to this responsibility not only will help minimize the possibility of fraud, but will also help the Government prosecute for fraud.

3-3 Detection

a. Government employees should be aware of what types of activity constitute fraud. The following are examples of possible fraud which might come to the attention of the ACO, or other Government personnel.

(1) Violation of the Buy American Act.

(2) Cost mischarging, i.e., shifting costs from fixed price to cost type contracts; charging the Government for work performed on commercial contracts.

(3) Progress payment billings for costs not actually incurred.

(4) Unauthorized use of Government property on commercial work.

(5) Sale of Government property as contractor owned property.

(6) Substitution of nonconforming components, including counterfeit components, in deliverable items.

(7) Misrepresentation of the quality of products, e.g., submitting specially prepared samples for Government inspection in place of routine production units (salting of lots), falsifying inspection or test records to indicate conformance.

(8) Alteration or forgery of acceptance documents, such as DD Form 250, Material Inspection and Receiving Report, or similar documents.

b. In addition the following examples illustrate conditions when fraudulent activities could exist. Extreme vigilance should be exercised in these areas;

(1) Foreign markings on materials may indicate a possible violation of the Buy American Act, Standard Form 33, Solicitation, Offer, and Award requires a contractor to specify what end products supplied do not qualify as domestic source end products.

(2) Certification as to acceptability of materials and their conformance to contract requirements, without Government verification, can be falsified.

(3) Any time Government surveillance of a contractor is greatly reduced or is eliminated, the potential for fraud increases.

(4) Contractors who are experiencing production, delivery, quality, or financial problems may be tempted to commit fraudulent acts to overcome those problems.

3-4 Contractor Programs

a. DoD policy promotes the establishment of contractor programs to improve compliance with law, regulations and contract committments. Contractors are encouraged to establish reporting mechanisms, such as hotlines, by which employees may report suspected instances of improper conduct. Contractors are also encouraged to issue instructions that encourage employees to make such reports.

b. The clause of DFARS 52.203-7003, Display of DoD Hotline Poster (Oct 1987), will be inserted by PCOs in solicitations and contracts expected to exceed $5 million. The clause requires that contractors display DoD Hotline posters prepared by the Office of the Inspector General, DoD, unless the contractors have established reporting mechanisms of their own. The posters are to be prominently displayed in common work areas within business segments performing work under DoD contracts. Contractors may obtain the posters from the DoD Inspector General, Attn.: Defense Hotline, 400 Army-Navy Drive, Washington, D.C. 22202-2884.

c. Where DFARS 52.203-7003 applies, ACOs should determine whether the contractor's fraud detection and reporting system is adequate within the meaning of the clause, or that DoD Hotline posters are required. If the ACO determines that the posters are required, the ACO shall so advise the contractor, in writing, with information on how to obtain the DoD Hotline posters. The ACO shall thereafter take such follow-up actions as are necessary to ensure that the DoD Hotline posters are properly displayed.

3-5 Contract Administration During Investigation of Alleged Acts. A suspicion or accusation that a contractor or contractor's employee(s) may have committed fraud or other criminal acts does not release the ACO and Contract Administration Office from the responsibility for proper administration of the assigned contracts in accordance with their terms, and applicable laws and regulations. However, during this period when investigations are ongoing the ACO should be aware of the following:

a. The suspicion of fraud or other criminal acts does not alter the purpose for which the Government entered into the contract, and the ACO remains responsible for fostering contract performance in furtherance of this purpose.

b. The suspicion of fraud or other criminal acts also does not alter the responsibility of the ACO to preserve the independence of contracting officer decisions.

c. Except for providing assistance in the form of information, ACOs in their capacity as Contracting Officers, and other persons representing the ACO, shall not perform any actions not in accordance with the terms of the contract and applicable regulations or not in furtherance of the contract purpose.

d. In all instances where the ACO or the ACO's representatives are requested to act or refrain from acting by persons not responsible for contracting or contract administration of the contract, the ACO shall request Region Counsel for an opinion as to the propriety of the action and its relationship to the contract purpose.

3-6 Reporting Procedures. As information surrounding a suspected act of fraud is sensitive in nature, it should not be divulged to anyone without a need for it. It should also be pointed out that, although a given situation might have the appearance of fraud, it may be simply negligence on the part of the contractor or a lack of awareness of wrongdoing. Whenever a Government employee detects or suspects fraud or becomes aware of any criminal investigation involving DLA he or she should immediately:

a. Inform his or her supervisor and take contract action deemed appropriate.

b. Report the matter to Region Counsel in accordance with DLAR 5700.8

c. Upon receipt of information from any of the team members regarding possible acts as indicated in a. and b., above, the ACO should insure that a coordinated review is scheduled and conducted in a timely manner. The ACO should make every effort to insure that this review is of such depth and quality that any doubts or reservations about the issue are dispelled, or, that sufficient information is developed that definitive action may be taken.

d. Where the ACO considers that an issue may have a significant effect upon a particular procuring activity, the ACO shall notify Region Counsel thru his or her immediate supervisor and request that the procuring activity's counsel be advised.

4.4 INDUSTRIAL SECURITY

4.4-1 References

a. FAR 4.4, Safeguarding Classified Information Within Industry.

b. FAR 53.204-1, Safeguarding Classified Information Within Industry (DD Form 254, DD Form 441).

c. DoD 5220.22-R, Industrial Security Regulation.

d. DoD 5220.22-M, Industrial Security Manual for Safeguarding Classified Information.

4.4-2 General

a. The guidance in this section covers the industrial security requirements as they involve the ACO and the cognizant security office and/or PCO during the performance of a classified contract and subcontract. The Defense Investigative Service (DIS) has the authority and responsibility for administration of the Defense Industrial Security Program (DISP). Within the DIS Regions the Directors of Industrial Security are designated as the cognizant security offices for all contractor facilities within their jurisdiction and are responsible for ensuring that classified material in the hands of industry is properly safeguarded.

b. The administration of classified contracts necessitates a close and continuing relationship between the ACO and the DIS cognizant security office. The DIS cognizant security office can assist and advise the ACO, particularly in the areas of postaward orientation action concerning classified contracts and in obtaining, interpreting and clarifying security classification guidance as it appears in DD Forms 254. Each DIS cognizant security office has a Classification Management (CM) Specialist who can be contacted for assistance and who can act as a catalyst between the government and the contractor. ACO's are encouraged to contact the CM Specialist for any assistance needed.

4.4-3 Procedures

a. The responsibility for providing a prime contractor with appropriate security classification guidance for the performance of a classified contract rests with the procuring activity. This guidance is provided to the prime contractor by use of the DD Form 254. The DD Form 254 is a contractual document and is required for all classified contracts. A classified contract is any contract that requires or will require access to classified information by the contractor or his/her employees in the performance of the contract. (A contract may be a classified contract even though the contract document itself is not classified.) The procuring activity also has the responsibility to provide the prime contractor with any changes necessary during contract performance (a revised DD Form 254 is issued) and to review the classification guidance at least once every 2 years. After this review the procuring activity advises the contractor (in writing) that no change resulted from the review or issues a revised DD Form 254 with the appropriate changes. The procuring activity also has the responsibility to issue a Final DD Form 254 upon completion of a classified contract if the contractor requests and is granted, authority to retain any classified material under the prime contract.

b. The DIS cognizant security office has the responsibility for initiating action with the procuring activity if the biennial review is not accomplished as required or if the classification guidance provided is not adequate for the performance of the contract.

4.4-4 ACO Responsibilities. During the performance stages of an assigned classified contract, the ACO is responsible for various security matters as listed in appendix C of DoD 5220.22-R. In discharging his overall responsibility for the administration of classified contracts, the ACO will be assisted by the Industrial Security Staff Specialist of the cognizant security office (DIS) assigned classification management duties. In instances where delegation of authority is not clearly defined, the matter should be coordinated with the PCO prior to the initiation of the action. Outlined below are some of the more significant functions and associated references which provide the necessary detailed guidance and instruction to perform these functions:

a. Reviews, approves, and signs DD Form 254 for classified subcontracts (DoD 5220.22-R, paragraph 7-102, and paragraph 4.4-5 below).

b. Issues notices of reclassification for subcontracts, when required by DoD 5220.22-R, paragraphs 7-102, 7-104, and 7-105.

c. Obtains resolution for any problem relating to classification of the prime and subcontract (see DoD 5220.22-R, paragraphs 7-102 and 7-105).

d. Indicates on the DD Form 254, the routing of subcontractor's requests for public release of information pertaining to classified contracts (DoD 5220.22-M, appendix I, paragraph F).

e. Furnishes justification for interim facility security clearance of prospective subcontractors (DoD 5220.22-R, paragraphs 1-241 and 2-102).

f. Authorizes release of classified information by contractor at seminars, meetings, and symposia, when authority is required (DoD 5220.22-R, paragraphs 1-113 and 1-400 through 1-409).

g. Reviews and furnishes written authorization for publication and distribution of classified sales literature (DoD 5220.22-M, paragraph 5p).

h. Provides a copy of final DD Form 254 for classified subcontracts to the cognizant security office (DIS). DTIC will be advised of terminations on classified contracts under which DTIC services are provided. Any extensions of classified contracts will be reported to DTIC only when ACOs have been duly authorized by PCOs to sign DD Forms 1540 in accordance with DLAR 4185.10, Certification and Registration for Access to DoD Scientific and Technical Information, DLAM 4185.3. Extensions of classified contracts need not be reported to the cognizant security office (DIS).

i. Advises contractor and subcontractor(s) under his cognizance of approved method of shipment of classified material, after coordination with Transportation functional element. Prime contract ACOs must identify subcontractor(s) involved in shipments of classified materials and promptly process requests for supporting administration in accordance with part 42.204, in order to avoid delays in providing the necessary shipping instructions. ACOs performing supporting administration must coordinate with their Transportation functional element in sufficient time to provide subcontractors with the approved method of shipment well before shipments are ready to be released to carriers. (DoD 5220.22-R, paragraph 1-602; DoD 5220.22-M, paragraph 17).

j. Authorizes classified visits, both outgoing and incoming (DoD 5220.22-R, section III).

k. Approves expenditures of funds for security requirements, i.e., area controls, storage equipment, protection alarm systems (DoD 5220.22-R, paragraph 1-109 and DoD 5220.22-M, paragraph 34c).

l. Reviews reports of security violations and recommends appropriate action (DoD 5220.22-R, paragraph 5-102d(1)).

m. Recommends to PCO use of secure electrical transmission system (DoD 5220.22-R, paragraphs 1-502 and 1-602).

n. Recommends to PCO need for COMSEC material for Research and Development, Production, Installation, and Maintenance (DoD 5220.22-R, paragraphs 1-502 and 1-602).

o. Appoints contractor couriers for COMSEC material after contractor identifies employees for this purpose (DoD 5220.22-R, paragraph 1-506).

p. Advises contractor of the ACO representatives' authorized access to controlled areas containing cryptographic material (DoD 5220.22-R, paragraph 3-101c).

q. Furnishes written approval to contractor to grant physical custody of TOP SECRET information to prospective subcontractors, vendors, and suppliers (DoD 5220.22-R, paragraph 1-602).

4.4-5 DD Form 254, Contract Security Classification Specification. The DD Form 254 for prime contracts is prepared by the program, project, or systems manager or similar official, and issued by the PCO. The ACO's determination, with respect to the classification specifications for subcontracts is based upon the classification specifications furnished by the PCO in connection with the prime contract. The actual preparation of these forms for subcontracts will normally be accomplished by the prime contractor. However, they will be approved and signed by the ACO. The Industrial Security Staff Specialist located at DIS will provide technical guidance and assistance to the ACO upon his request. With the agreement of the ACO, the prime contractor may accomplish the required distribution of the classification guidance. Where the DD Form 254 is required under lower tier subcontracts, the ACO cognizant of the contractor issuing the initial subcontract will be responsible for signing the form for the initial and lower tier subcontracts. (This does not apply to service and graphic arts contracts, pursuant to DoD 5220.22-R, paragraph 7-102d(4)(b).)

4.4-6 Foreign Influence Over DoD Contractors. The ACO will notify the cognizant security office (DIS) whenever he becomes aware of any of the following situations:

a. Foreigners have or plan to purchase stock in a corporation.

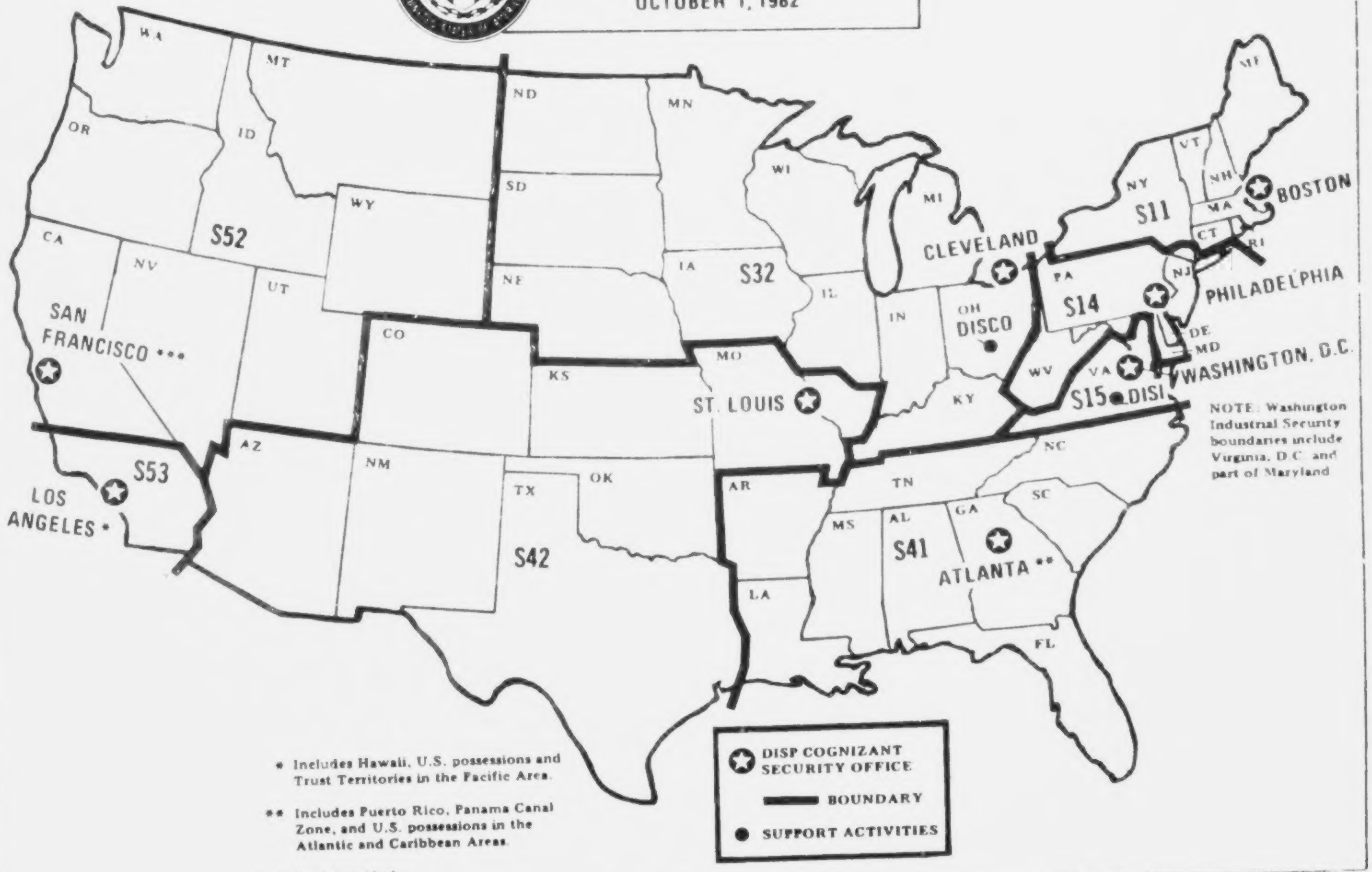
b. Foreigners plan to buy out a partner or privately owned contractor.

c. A foreign-controlled trust is established to purchase a contractor's assets.

d. A contractor becomes obligated to foreign interests through loans to the contractor or joint ventures.

e. Interlocking directorates with foreign interests have been or will be established. The cognizant security office (DIS) will then take action necessary to determine the extent of foreign ownership control or influence in accordance with DoD 5220.22-R section II, part 2.

DIS COGNIZANT SECURITY OFFICES, BOUNDARIES AND ACTIVITIES
OCTOBER 1, 1982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DISP COGNIZANT SECURITY OFFICE
BOUNDARY
SUPPORT ACTIVITIES

NOTE: Washington Industrial Security boundaries include Virginia, D.C. and part of Maryland

* Includes Hawaii, U.S. possessions and Trust Territories in the Pacific Area.

** Includes Puerto Rico, Panama Canal Zone, and U.S. possessions in the Atlantic and Caribbean Areas.

*** Includes Alaska.

4.8 CONTRACT FILE MAINTENANCE, CLOSEOUT, AND DISPOSITION

4.8-1 References

a. FAR 4.8, Contract Files
b. DFARS 4.8, Contract Files
c. DAR Supplement 2, subject as above.
d. DLAM 5015.1, Files Maintenance and Disposition.
e. DoD 4105.59-H, DoD Directory of Contract Administration Services Components.

4.8-2 Scope. This section deals with procedures of the receipt, review, distribution, filing, and disposition of contracts or subcontracts, and related documents in the DCAS office.

4.8-3 General

a. COF will be charged with the following responsibilities:

(1) Contract receipt.

(2) Contract distribution.

(3) Control and maintenance of official contract files on part A contracts and working files on part B contracts when responsibility is so assigned.

(4) Disposition of part A contract files and part B working files.

b. Maintenance of the official contract files is the responsibility of COF except for those segments maintained by functional elements (e.g., PQA files maintained by QARs). The ACO has the responsibility for ensuring that related documents and correspondence which he generates or processes are furnished to COF for inclusion in the files. Working files such as the QAR or IS folders may be maintained within the appropriate functional elements.

4.8-4 Receipt and Review of Incoming Procurement Documents

a. Purchasing offices will normally forward five copies of the procurement document, one of which will be signed, authenticated, or conformed, directly to the CAO designated in DoD 4105.59-H, which has contract administration responsibility in the specific geographical area or plant. In the event sufficient copies are not received, COF will immediately request the purchasing office to provide the required additional copies, or reproduce additional copies when it is more economical or expedient to do so.

b. Upon receipt, COF will perform a review of each incoming contract/order for the purpose of making advance distribution of prime contracts, e.g., to production/quality; and one-time distribution of those contracts/orders received for support administration or paid by other than the local DCASR (ODO).

c. It is the responsibility of DS&FM to review each incoming contract/order for the purpose of making proper assignment (see 90.15) and extracting data, which affects Contract Administration Outputs, for input into the data system. DS&FM's review and data input responsibilities apply only to contracts received for prime administration, ODO Contracts, or support assignments for payment only (assignment Code G). COF also has the responsibility to review other incoming support assigned contracts/subcontracts, and extract data, which affect Contract Administration outputs, for input into the data base.

4.8-5 Distribution and Routing of Procurement Documents

a. *Contracts Received for Administration.* Normally COF will make final distribution of prime contracts upon receipt of a Short Form Abstract (see A-100.23) from DS&FM and in accordance with 4.8-8, Contract Distribution and Control Flow Chart. A Short Form abstract should be requested for each contract on hand awaiting an abstract for more than 10 working days. If this request results in the receipt of an abstract, examine the R9 line of the abstract for the coded remark "M = MILSCAP abstracts." If the abstract contains the remark "M", the hard copy contract has not been received and processed by DS&FM. Contract distribution may be made to the ACO without the abstract in those cases where the abstract has not been received. At local option, procedures may be developed between Contract Management and DS&FM for the submission to DS&FM of information regarding the receipt of hard copy contracts for which the short form abstract has not been received. In the event that a short abstract has been received and the contract has not been received from the purchasing office, COF will request the required contract from the purchasing office 14 working days from the transaction date of the abstract. Based on DS&FM input, each abstract will reflect the proper assignment code (part A or B of the CAR) and also the applicable functional element assignment code for use by COF in making distribution. Establishment of files will be in accordance with 4.8-6a and b.

b. *Master Solicitations.* When a DLA purchasing office employs the master solicitation technique, the CAO should anticipate receiving six copies of the procurement instrument (one copy to DS&FM, five copies to the CAO). Copies of the master solicitation documents referenced in the procurement instruments will be prepositioned by DLA purchasing offices as follows:

30 to each DCASR (payment office copies)
15 to each DCASMA
6 to each DCASPRO

Copies will be maintained for use by ACOs, QARs, DS&FM and other personnel as appropriate. It should be noted that quantities of master solicitation documents required above those initially prepositioned will be available upon request from the DLA purchasing office.

c. *Criteria for Distributing Copy of Contract to Functional Elements.* COF will determine the routing of the floater copy of the contract in accordance with local procedures using the following criteria.

(1) *Property Administration Element.* All contracts in which the new contract abstract shows assignment of a Property Administrator.

(2) *Quality Assurance.* All contracts requiring Procurement Quality Assurance and/or acceptance at source.

(3) *Systems and Engineering Element.* All contracts $1,000,000 and over.

(4) *Small Business Element.* All contracts $500,000 and over.

d. *Contracts or Subcontracts Assigned for Supporting Administration.*

(1) *Single Function Assignments Other Than ACO Function (CAR Part C).* Two copies of the contract or subcontract will be distributed to the functional element involved. Disposition of any additional copies received will be in accordance with local procedures.

(2) *ACO Single/Multifunction Assignments (CAR Part A).* COF will establish an official contract file and will distribute copies of the contract or subcontract to the functional elements concerned. ACOs will ensure that the FDD entered into the CAR provides sufficient time to accomplish the support function.

(3) *NASA Contracts.* Since NASA retains prime administration of contracts assigned to DCAS, such assignments will be entered into the MOCAS Data System as supporting administration. Review, routing, and distribution of copies of these contracts are the same as described in subparagraph a above.

(4) *DoE contracts.* DoE contracts received for administration less payment or closeout only contracts will be input as prime administration. DoE contracts that require single delegations will be entered as support administration. All DoE buying activities will provide manual abstracts for contracts assigned to DLA for contract administration by January 1981. Contract closeout for DoE contracts other than closeout only and support administration will be in accordance to 4.8-4d.

e. *Receipt of One or More Delegations*

(1) DCAS offices receiving contracts from DoD purchasing activities for performance of only a portion of the contract administration functions established by DoD directives to be the responsibility of CAOs will take the following action: COF will prepare a request for assignment of the contract in accordance with DoD Directives and forward it to the Chief of the Contract Administration element for evaluation, concurrence and signature prior to submission to the purchasing activity.

(2) The above action is not applicable to the following:

(a) Contracts which the purchasing offices are authorized to retain (FAR 42.203 and DFARS 42.203).

(b) Contracts under which ASD has authorized retention of specific functions.

(c) Contracts under which the purchasing activity has retained a specific function (FAR 42,202 (B)).

(d) Contracts assigned for Cost Accounting Standards only (FAR 30.401).

4.8-6 Establishment and Maintenance of Official Files

a. *Official Contract Files*

(1) COF or, when decentralization of segments of the files is authorized, each functional element is responsible for their respective portion in accordance with subparagraphs (3) and (5) below.

(2) Initially one file folder will be prepared for each part A contract. However, when the file folder expands to the limits (i.e., three-fourths inches) stated in DLAM 5015.1, paragraph 2-404c, additional folders will be prepared and the official contract file subdivided into the parts shown in subparagraph (3) below. The additional folders will be identified by part number (rubber stamp may be used). Part 1, basic procurement document and related matter, may contain an index of the other parts which constitute the total official contract file. If you decide use of a contract modification index is appropriate (see 43-2), DLA Form 1611, Contract Modification Index, shall be used and it is to be filed on top of the basic contract in part 1. (Use of similar purpose forms is authorized until existing stocks are exhausted.)

(3) When required (see paragraph (2) above), files will be divided into the following parts:

(a) Part 1—Basic procurement document and related material.

(b) Part 2—Subcontracts and related material.

(c) Part 3—General correspondence.

(d) Part 4—Status and expediting information including DD Form 375.

(e) Part 5—Expenditure and progress payment approvals and related material.

(f) Part 6—The Property Control Record is to be established and maintained by the Property Administration element during the active life of the contract. When the contract is completed or terminated and all required property administration sections have been completed the folder will be forwarded for inclusion in the official contract file.

(g) Part 7—The Termination Case File is to be established and maintained by the Termination element, as required. The completed Termination Case File, including plant clearance files applicable thereto, will be forwarded for incorporation into the official contract file.

(h) Part 8—The Plant Clearance File is to be established and maintained by the Plant Clearance element until the case file is closed. Upon completion of all actions, these records will be filed and retained as part 8 of the official contract file, except for files related to termination inventory which will be forwarded to the TCO for inclusion in the Termination Case File (part 7).

(4) The parts may be subdivided by topic or subject to the extent necessary to facilitate local filing or reference needs. (See DLAM 5015.1, paragraphs 2-304 and 3-102b.)

(5) Official contract file folders for incoming contracts received for a single function will be prepared and maintained by the functional element performing the administration.

b. *CAR Part B Contract Files.* The payment file established by the Comptroller will be the only official contract file maintained for these contracts. COF, or when decentralization of files is authorized each functional element, will establish and maintain a common file by contractor for all part B contracts. However, when deemed necessary individual contract folders may be prepared.

c. *Contractor General Files.* Folders for miscellaneous matter relating to a designated supplier, but not to a specific contract or subcontract, will be prepared when the first matter of this nature is routed to the files. Basic directions for content and maintenance of the file are contained in FAR 4.8 and DFARS 4.8. Official preaward survey files will be maintained by the preaward survey monitor within the Production element. A separate folder shall be established for novation agreement and change of name agreement correspondence as a subdivision of this file. Basic directions for content and maintenance of the file are contained in FAR 4.8 and DFARS 4.8. Obsolete or superseded documents will be purged at least annually and disposed of in accordance with paragraph 4.8-7.

d. *Contract Cross-Reference/Locator System.* COF will be responsible for establishing a mechanized Cross-Reference/Locator System in accordance with DFARS 4.802-73. The system will consist of the latest semi-monthly Contract Reference List and either the most current MA Transaction Listing (MOCAS IB Improved) or the daily Updated Contracts by TD (A-100.13) furnished by DS&FM.

e. *File Chargeout Procedures.* A file chargeout record will be maintained by COF and used to indicate which folders are out of the file and who is responsible for their return (see DLAM 5015.1, paragraph 2-703). Members of an ACO team may be exempt from chargeout requirements when the contract files are decentralized and located in the immediate work area of that ACO group. Members of other functional elements must complete chargeout cards.

f. *Filing of Contractor Information at Another Contractor's Facility.* At times, it is necessary for DCAS CAOs to maintain an office or files which contain information relating to a contractor(s) other than the contractor at whose facility the office or file is maintained. When such a situation arises, the information involved should be kept secured. Secured in this sense means that the file cabinet shall be a steel cabinet secured by a steel bar and a three-position, dial-type, changeable padlock or by a steel file cabinet having an automatic unit-locking mechanism, and a built-in, three-position dial-type changeable combination lock. **These cabinets are not to be used for storage of classified materials.** Locked office doors that are subsequently opened for cleaning, for example, are not considered secure. In order to preclude the multiplicity of facilities, all DCAS personnel in the plan will share the offices and filing cabinets on an equal basis. Technical guidance concerning the security aspects outlined above can be obtained from the Defense Investigative Service.

4.8-7 Disposition of Contract Files

a. Disposition (Retirement and Disposal) of part A contract files will be in accordance with DFARS 4.804-70, 4.805-70, 4.805-71, and DLAM 5015.1. (For disposition of contracts received for ACO single/multifunction assignments, see 4.8-7d.)

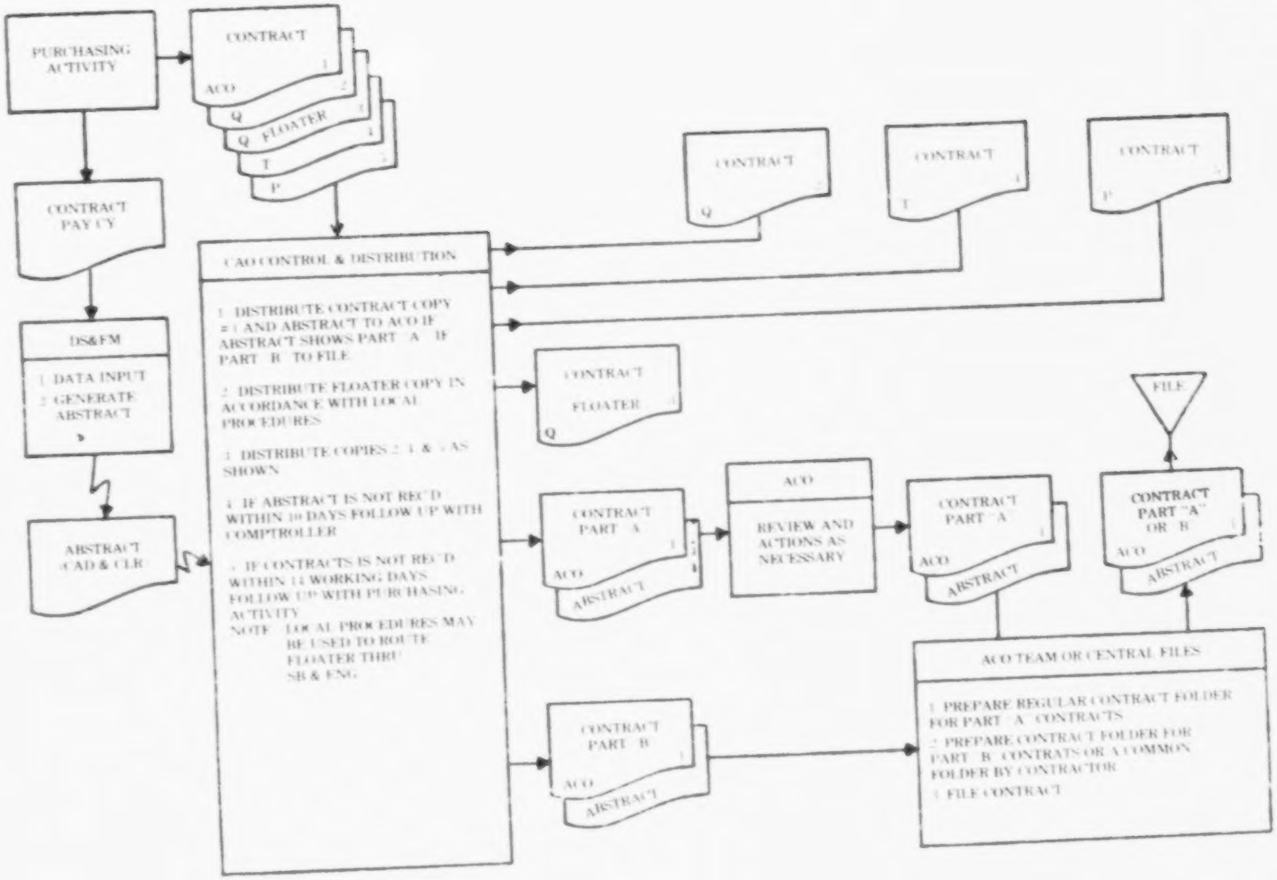
b. Copies of part B contracts (for orders, see below) and associated material will be purged from the files and destroyed by COF upon receipt of advice from the Comptroller that the contract has been completed and finally paid, i.e., the contract is shown in section 5 of the CAR. An exception to this procedure is that the Quality Assurance element will review their working files upon physical completion to ensure that copies of correspondence reflecting significant departures from quality assurance requirements have been forwarded to the official contract files and/or supplier's miscellaneous files. The Quality Assurance working files will be retained on-site in accordance with the provisions of DLAM 8200.2, Section II, part 1. Also, on a case by case basis, correspondence considered significant ~~may~~ SHOULD be forwarded to the official Part B contract file maintained by the Comptroller. Part A and B orders may be retired any time during the life of the BOA or contract under which they were issued (see paragraph 16.703-7b(2)(b).

c. Upon physical completion of specific functions of Part A contracts, working files will be purged by the appropriate functional element within 90 days. All significant material, not already available in the official contract file, will be forwarded to COF for inclusion therein. The remainder of the working file will be destroyed by the responsible functional element. Since DD Forms 250 are filed and available from the payment file, copies of these documents will not be retained in the official contract files. An exception to this procedure is that the Quality Assurance element will review their working files upon physical completion to ensure that copies of correspondence reflecting significant departure from quality assurance requirements have been forwarded to the official contract files and/or supplier's miscellaneous files. The Quality Assurance working files will be retained onsite in accordance with the provisions of DLAM 8200.2, Section II, part 1.

d. Files accumulated by an office of supporting administration relative to functions of Quality Assurance or Production are considered to be working files and should be disposed of onsite (DFARS 4.804-70 and 4.805-70). All other supporting administration files will be purged by the responsible functional element and forwarded to COF for retention and eventual disposition as official contract files (DFARS 4.804-70), or if the purchasing office or CAO so requests, supporting administration files will be forwarded to that office.

e. In cases where supporting property administration is delegated and involves only the property administrator (property-only), the files should be returned as required by DLAM 8135.1, Para. 13-802, to the office that delegated supporting property administration. In the event more than one function is delegated, the property files will be disposed of as part six of the ACO's official file, in accordance with paragraph d. above.

f. In cases where supporting administration is limited to the termination function, the termination case file, including plant clearance files applicable thereto, will be forwarded to the activity which requested supporting administration.


PURCHASING ACTIVITY
CONTRACT
ACO 1
Q 2
Q FLOATER 3
T 4
P 5
CONTRACT PAY'CY
DS&FM
1. DATA INPUT
2. GENERATE ABSTRACT
ABSTRACT (CAD & CLR)
CAO CONTROL & DISTRIBUTION
1. DISTRIBUTE CONTRACT COPY #1 AND ABSTRACT TO ACO IF ABSTRACT SHOWS PART "A" IF PART "B" TO FILE
2. DISTRIBUTE FLOATER COPY IN ACCORDANCE WITH LOCAL PROCEDURES
3. DISTRIBUTE COPIES 2, 4 & 5 AS SHOWN
4. IF ABSTRACT IS NOT REC'D WITHIN 10 DAYS FOLLOW UP WITH COMPTROLLER
5. IF CONTRACTS IS NOT REC'D WITHIN 14 WORKING DAYS FOLLOW UP WITH PURCHASING ACTIVITY
NOTE: LOCAL PROCEDURES MAY BE USED TO ROUTE FLOATER THRU SB & ENG
CONTRACT Q 2
CONTRACT T 4
CONTRACT P 5
CONTRACT FLOATER Q 3
CONTRACT PART "A" ACO 1 ABSTRACT
ACO
REVIEW AND ACTIONS AS NECESSARY
CONTRACT PART "A" ACO 1 ABSTRACT
CONTRACT PART "A" OR "B" ACO 1 ABSTRACT
FILE
CONTRACT PART "B" ACO 1 ABSTRACT
ACO TEAM OR CENTRAL FILES
1. PREPARE REGULAR CONTRACT FOLDER FOR PART "A" CONTRACTS
2. PREPARE CONTRACT FOLDER FOR PART "B" CONTRATS OR A COMMON FOLDER BY CONTRACTOR
3. FILE CONTRACT

4.804 CONTRACT CLOSEOUT

4.804-1 References

a. FAR 4-804, Closeout of contract files.

b. DFARS 4.8, Contract files.

c. DLAM 7000.1, Accounting and Finance Manual, chapter 5.

4.804-2 Scope. This section deals with procedures for:

a. Closeout of physically completed contracts and subcontracts administered by DCAS offices.

b. Reporting contract completion status to the cognizant PO.

4.804-3 General—Contracts Received for Prime Administration

a. See paragraph A-100.3a(2) for the definition of a physically completed contract. Reporting requirements and standard times for closing physically completed contracts are set forth in FAR and DFARS 4.804-1 and DFARS 4.804-4.

b. Contract Completion Status and Unclosed Contract Status are reports transmitted to the PO by DS&FM. The issuance of these reports is contingent upon the face value of the contract and type of administration performed. Hence when a contract is physically complete, i.e., processed from CAR section 1 to section 2, the computer will assign the appropriate Contract Closing Condition Group number code as shown below:

(1) *Closing Condition Group 1*—Fixed Price Unilateral Purchase Orders under $25,000 in Part B. Final Contract Completion Notices (PK9s) are automatically issued to the Purchasing Office as purchase orders in this group become physically complete. Contract files are closed when the final acceptance and the final payment are recorded in the R9 remarks of the CAD.

(2) *Closing Condition Group 2*—Firm Fixed Price Contracts (Part B) not exceeding $99,999. Contract Completion Notices (PK9s) are automatically issued when final payment has been made.

(3) *Closing Condition Group 3*—All other contracts (part A). Except for cost type contracts, (i.e., codes R, S, T, U, V, and W), upon final payment of a closing condition group 3 contract an NLA is generated and forwarded to the ACO. When the ACO certifies that all administrative actions are complete a Contract Completion Notice (PK9) will be generated and forwarded to the PCO. The ACO's signature on the final voucher under cost type contracts certifies that all administrative actions are complete.

4.804-4 Part A Contracts

a. *Review Prior to Closeout.* Sixty days prior to either the final delivery or estimated completion date of a part A contract, the ACO will ensure that a comprehensive contract review is made to determine any step in the closeout process which can be initiated before physical completion of the contract, e.g., final patent or royalty reports, plant clearance, completion of property administration, etc. The 60-Day Closeout alert described in section A-600 will be utilized by the ACO to initiate this review. Contract requirements will be reviewed immediately to identify those on which closeout actions can begin and to establish target dates for closing out the remaining requirements. Use of the DD Form 1597, Contract Closeout Check-List, is optional except for classified contracts and contracts terminated for convenience (see 4.804-9). The DD Form 1593 or the computer-generated Contract Administration Completion Record (DD Form 1593) as described in section A-600 will be utilized by the ACO to initiate closeout actions. It will be forwarded to appropriate functional elements within the DCAS offices to verify that their required closeout actions have been completed. Where a contract requires the submission of a final report, the ACO is responsible for following up with the PCO within 60 days after submission to assure final acceptance of the report.

b. *Physical Completion*

(1) Upon evidence of physical completion, the computer will:

(a) Create the R2 Remark in the CAD File and transfer the contract to CAR section 2. (See A-100.3e for ACO responsibilities for movement of contracts from CAR section 1 to section 2.)

(b) Establish Overage Suspense Control. The ACO will review the CAR part A monthly to identify those contracts that have been moved to CAR section 2 during the month. The ACO will ensure that all necessary closeout actions have been initiated and that, when appropriate, the following special closeout requirements are initiated:

1. When commencing closeout actions on any contract involving Government property in the possession of the contractor, the ACO will forward a DD Form 1593 (one copy) to the Property Administration element requesting the actual or estimated dates of completion of property administration and plant clearance (the Property Administration element will be responsible for coordinating with the Plant Clearance element to determine the status of closeout actions). The computer-generated Contract Administration Completion Record (see section A-600) will be utilized by the ACO in lieu of the DD Form 1593 to request Property Administration closeout action.

2. For classified contracts, a Contract Ad-

ministration Completion Record (DD Form 1593) must be forwarded to the cognizant Industrial Security Office. The ACO will indicate on the DD Form 1597 in the "Action Completed" column the date that the DD Form 1593 was forwarded to the cognizant security office. Certification of completed action by the cognizant security office will not be requested by the ACO. DoD 5220.22-M, contains direction for disposition or retention of classified material by a contractor. Disposition instructions or retention authority received from the authorized activity will be forwarded to the contractor, and a copy provided the cognizant Industrial Security Office. After a classified contract is closed and Final Contract Completion Statement (PK9) has been issued, all classified material approved for retention by the contractor is under the cognizance of the PO and cognizant Industrial Security Office (see DoD 5220.22-R, section VII, 7-104 and 7-106).

3. When a contract is physically complete the ACO will review the status of funds to ascertain whether funds are available for removal prior to final payment.

c. *Final Payment*

(1) Upon evidence of final payment and a valid R2 Remark, the computer will:

(a) Create a Contract Closing Action Status Request/Reply (NLA) coded "FIN PAY" which will be distributed to the cognizant ACO to obtain certification of completion of all required closing actions.

(b) No NLA will be issued on cost type contracts (i.e., R, S, T, U, V, and W), as these contracts will be closed based on ACOs signature on the final voucher.

(c) Create an R7 Remark in the CAD "FIN PAY" NLA Issued, Date Issued.

(2) Upon receipt of an original and one copy of the computer-generated Contract Closing Action Status Request/Reply (NLA) coded "FIN PAY," the ACO will take closeout action in accordance with subparagraph d below, with the following exceptions:

(a) *Incrementally Funded Contracts.* When a Final Payment Notice NLA is received indicating final payment on the original obligation of incrementally-funded type contracts, the ACO will determine if the option is to be exercised. If the option is to be exercised, a request should be made to the CAR Clerk or CAO Terminal (see appendix A-100) to move the contract from section 2 to section 1. If the option is not to be exercised the Final Payment Notice NLA will be completed in accordance with subparagraph d below.

(b) *Uncollectable Debts.* When the ACO determines that a claim against the contractor exists on a contract, he will notify DS&FM by letter with supporting documentation. Normally, DS&FM requires a 45-day period from the date of their initial demand to resolve a debt with the contractor. If DS&FM is unable to collect the contract debt, the claim will be transferred to the Accounting and Finance Division, HQ DLA (DLA-CF) and the ACO will be so advised. Based on this notification, the ACO will process an NLA indicating "Final" if all other administrative actions have been completed. After the PK9 has been issued, DS&FM will notify the PO and accounting station that the jurisdiction of the contract debt has been transferred to DLA-CF.

(c) *"As Required" or "If Required" Items.* Normally, the ACO will accept the CAR R8 Remark, commonly referred to as the PSCN, which indicates the date that production surveillance was completed. However, occasionally, it may be necessary to contact the functional element assigned to monitor the "as required" or "if required" item listed on DD Form 1423. After determining that there are no outstanding requirements, the ACO will complete the Final Payment Notice NLA.

(d) *Contracts Providing for Price Revision.* Contracts containing clauses providing for price revision (price escalation, economic price adjustment and incentive price revision) require the establishment of internal controls adequate to identify those conditions necessitating administrative action. ACOs must be alert to market price fluctuation having an impact on their contracts. In all cases, prior to completing the Final Payment Notice NLA, the ACO will assure that all applicable clause requirements have been complied with and any necessary contract modifications have been processed.

(e) *Cost-Type Contracts.* Circumstances and procedures under which final overhead rate negotiations may be expedited for closeout purposes are set forth in paragraph 42.7-11. DCAAM 7640.1, paragraph 8-506(b)(1), makes the criteria cited in paragraph 42.7-11 equally applicable to cost-type contracts which provide for overhead reimbursement by audit determination. ACOs should take advantage of these provisions for expediting contract closeout, and should encourage the auditors to do likewise.

(f) *Contracts Which Contain a Value Engineering (VE Clause.)* Where a modification to the contract provides for contingent VE royalty payments to be paid over a period of up to 3 years after physical completion of the contract, the ACO may transfer the contract to section 3 of the CAR using dormant code, VE. At the same time, the following in the clear remark will be included on the R5 card "VE payments thru year date" (for example, 75280). Where the ACO determines a minimal probability exists that follow-on contracts will require a future royalty payment, he may process the final NLA and close out the contract. If a royalty must be paid subsequent to closeout, the contract will be retrieved from the Federal Records Center, and DS&FM will be requested to open the contract for payment purposes only. For those contracts which the ACO elects to retain in section 3, he will not process a final NLA until the final modification is received and paid or until expiration of the contingency period, whichever is later. A 21-Day Overage Alert NLA will be issued in accordance with the procedure described in subparagraph g below.

(3) A Final Payment Notice NLA will not be provided for those contracts under which payment is made by other than the local DCASR, or for no-cost contracts (see paragraph d(2) for closeout procedure).

d. *Contract Closeout*

(1) Reporting of Contract Closing Action: When all contract administration closing actions have been completed, the ACO will annotate the Final Payment Notice NLA. The DD Form 1593 will be used for this purpose (see subparagraph (2)) on those contracts for which Final Payment Notice NLA is lost or where one is not required to be generated, e.g., contracts paid by other than local DCASR and contracts with no funds obligation. The following entries will be made on the Final Payment Notice NLA when used:

(a) Under column headed "TRANS DATE," enter the Julian date that administrative closeout action was completed.

(b) Under column headed "TRAN STATUS," cross out the "D" and enter an "F" indicating final report.

(c) ACO's signature.

(2) Use of DD Form 1593 in lieu of NLA: In the event an NLA requiring ACO annotation is lost, or where one is not required to be generated, the ACO will use a signed DD Form 1593 to provide contract closeout information to DS&FM. The Remarks section of the DD Form 1593 will contain the following information as applicable:

Response to Last Overage Alert

Revised Estimated Completion Date———

Reason for Delay Code(s) ——— or *Final Close-out Notice*

All Contract Closeout Actions Completed on ———

Corrected Final Closeout Notice

Revised Estimated Completion Date ———

(3) Distribution of Annotated Final Payment Notice NLA or DD Form 1593:

(a) FIN PAY NLA—One copy to DS&FM CAR Clerk or CAO Terminal and one copy retained in CA Contract File.

(b) DD Form 1593—One copy to DS&FM CAR Clerk or CAO Terminal and one copy retained in CA Contract File.

(4) Computer Processing: Upon receipt of the annotated Final NLA or DD Form 1593, the computer will:

(a) Transmit to the PO a final Contract Completion Statement (PK9).

(b) Transfer the contract to CAR section 5.

(c) Create a CAD R9 Remark "NLA Processed."

(d) Generate CLR Obligation Adjustment Transaction Record which will reduce the unliquidated balance to zero.

e. *Delay in Closing Contracts*

(1) *21-Day Alert NLA*. The computer will generate an additional NLA notice 21 days before a contract becomes overage, based upon the R2 overage date. This NLA will contain the same message as the "FIN PAY" NLA provided the ACO. Two copies of this NLA will be provided to the ACO as an alert to a potentially overage contract. An additional NLA will be issued when the overage date is reached and an ECD has not been included in the R2 Remark or a Final NLA processed. This NLA will contain an "X" in the "OA IND" column and a message "CONTRACT OVERAGE." A 7-day suspense will be established for return of the annotated NLA. The ACO will annotate the 21-Day Alert Notice NLA as follows:

(a) If all administrative closing actions have been completed, complete entries identified for Reporting of Contract Closing Action (subparagraph d(1) above), e.g., TRANS DATE.

(b) If administrative closing actions have not been completed:

1. Under column headed "EST COM DATE," enter estimated Julian date by which contract administration closing action will be completed.

2. Under column headed "DELAY REASON," enter reason for delay code provided in paragraph A-200.6. If more than one reason code is applicable, enter codes in order of significance. Up to three reason codes may be included.

3. No entry will be required under column headed "TRAN STATUS" since a "D" (indicating Interim Report) is preprinted.

4. Write the word "Overage" and follow with the ACO's signature.

(2) *Distribution of Annotated NLA*. One copy of the annotated 21-Day Alert NLA will be forwarded to DS&FM CAR Clerk or CAO Terminal. One copy will be retained by the ACO as a suspense document.

(3) *DS&FM Processing of Annotated NLA*. The DS&FM CAR Clerk or CAO Terminal will update

the R2 portion of CAD by keypunching directly from the annotated NLA.

f. *Reporting by Comptroller of Overage Contracts in CAR Section 2*

(1) When a contract becomes overage, Comptroller will advise the PCO, as required by DFARS 4.804-4, by the transmission of an Unclosed Contract Status (PKX) Report. This report will be resubmitted when conditions or the anticipated closing date cited in the original report are changed. The basis for this report is the 21-Day Alert NLA annotated by the ACO to reflect open contract administration actions.

(2) Upon processing of the annotated 21-Day Alert NLA with an estimated completion date and reason for delay (and R2 Remark update), the computer will:

(a) Transmit to the PO an Unclosed Contract Status PKX Report.

(b) Update the overage suspense control based upon the estimated closing date provided by the ACO.

(3) Twenty-one days before the estimated closing date entered in the CAD R2 Remark, the computer will create an additional 21-Day Alert NLA. This NLA will contain an "X" in the "OA IND" column and a message "21 DAY ALERT OVERAGE" indicating an overage contract. A 7-day suspense will be established for return of the annotated NLA. The ACO will annotate this overage 21-Day Alert NLA in accordance with subparagraph e above.

(4) The processing of this annotated NLA will provide for resubmission to the PO of an updated Unclosed Contract Status (PKX) Report or Contract Completion Statement (PK9). This procedure will be repeated until a final Contract Completion Statement (PK9) is transmitted.

g. *Reporting of Overage Contracts in CAR Section 3*

(1) When a contract is moved from CAR section 2 to section 3, the R2 Remark is deleted from the CAD; however, the Final Acceptance Date (FAD) and Overage Date are retained in the Contract Completion Status Suspense record. (These contracts will not be included in overage contracts reports (see paragraphs A-100.16 and A-200.5) The computer will generate a NLA Notice 21 days before the contract reaches the overage date. Tow copies of this 21-Day Alert will be provided the ACO. A Notice of Delay in Closing Contracts will be processed to the PCO when the contract becomes overage.

(2) The ACO will annotate the NLA in the same manner as the NLA created for contracts in CAR section 2, e.g., Estimated Completion Date and R2 Reason for Delay Code (see subparagraph e(1)(b) above). In addition, the following comment will be included: "Contract in section 3. Update R2. Return to section 3." One copy of this annotated NLA will be forwarded to the Comptroller CAR clerk at the Regional Office.

(3) Based upon the processing of this annotated NLA, the computer will transmit the Unclosed Contract Status (PKX) to the PCO, and update the suspense record. The procedure described in subparagraph f above will be followed until a Final NLA is processed.

4.804-5 Unauthorized Close Out

Any movement of a contract from Section 2 to Section 5 of the CAR without a final payment indicator will generate an NLA with an action code and message "Unauthorized c/o" to the ACO so proper action can be accomplished to close the contract and prepare a mechanized PK9 to the Purchasing Activity.

Upon receipt of the action code "Unauthorized c/o", the ACO shall either move the contract to Section 1 or 2 of the CAR or have a G coded Final Payment issued by Comptroller. Comptroller will then have either a PKX issued if the contract is to remain open or a PK9 issued if it is to remain closed.

4.804-6 CAR Part B Contracts for Mechanized Closeout

Primary responsibility for the closeout of CAR Part B contracts rests with the Comptroller. However, the CA Directorate has a responsibility to actively monitor the closeout process for all contracts. In order to fulfill this responsibility, the Region Policy and Reports Office should regularly review with the Comptroller those contracts in CAR part B section 2 which are overage to insure that appropriate action is being taken to rectify the causes of the overage condition and, where ACO assistance in the closeout process is required, to aid the Comptroller in securing this assistance. (The overage listings provided for an A-100.16 may be useful in the performance of this review.) Disposition of CAR part B contracts will be in accordance with 4.8-7.

4.804-7 Contracts/Subcontracts Received for Supporting Administration

a. *Multifunction Assignments (CAR Part A).* Upon completion of delegated functions, the ACO will perform closeout actions in accordance with 4.804-4, including the processing of DD Form 1593 and 1597, and will prepare and submit a DD Form 1594 to the PCO or prime ACO as appropriate. A copy of the DD Form 1594 will be furnished to Comptroller as advice that the contract should be moved to section 5 of the CAR. Closeout of NASA contracts will be effected in the same manner as DoD contracts, except that Comptroller will not make payment nor will the ACO certify the final voucher under cost-reimbursement type contracts (see 31.2–3). DD Forms 1593, 1597, and 1594 will be prepared and processed as indicated above.

b. *Single/Multifunction Assignment (CAR Part C).* Upon completion of the assigned function, the functional element performing under the contract/subcontract (including Quality Assurance) will be responsible for advising the PCO or prime ACO that the function is completed. COF must be notified whenever multifunction assignments are completed to insure that the contract file will be closed. A DD Form 1594 will be issued for this purpose except for those cases where the advice of completion is accomplished by another authorized form, e.g., DD Form 1593, Final DD Form 250, DD Form 1155, Order for Supplies or Services, for Quality Assurance only. A copy of the completed DD Form 1594 or other authorized form will be furnished to Comptroller if required. (The requirement for initiating a DD Form 1594 does not apply to requests for quality assurance of subcontracts.) In cases where supporting administration is limited to the termination function, with disbursing responsibility retained by the requesting activity, advice of completion of the termination action and any collateral plant clearance support will be furnished the requesting activity by use of prescribed contract termination status reports prepared and distributed by the Terminations element.

4.804–8 Contracts/Agreements Which Provide for Issuance of Orders/Calls

a. Contract Closing Action Status Request/Reply (NLA) will be generated and a Contract Completion Statement (PK9) or Unclosed Contract Status (PKX) Report transmitted to the procuring office for each completed assigned order/call in accordance with procedures outlined in 4.804–4/4.804–5.

b. Upon expiration of the ordering period or close-out of all orders, whichever is later, the ACO will request movement of contract/agreement from CAR section 1 to section 2 by forwarding a DD Form 1593 marked "final" to Comptroller (see 4.804–4d(2)). This will also result in the transmission of the PK9 to the PO. Closed part A and B orders may be retired any time during the life of the BOA or contract under which they were issued (see 16.703–7b(2)(b) and 4.8–7b). Separate temporary storage may be used for the closed orders/calls pending retirement of the total contract.

c. Certain orders, usually issued under maintenance, overhaul and repair contracts, may involve fixed-price and cost-reimbursement features. When such orders are numerous or involve low dollar amounts, the ACO and DCAA auditor may agree, in the absence of contractual requirements to the contrary, to reduce the audit effort expended under the contract by performing only one final audit of the total contract after completion of the last order. If such an agreement is contemplated, the ACO should coordinate with the PCO telephonically for any special instructions on handling final contract adjustments and appropriations. If such an agreement is arranged, the ACO will notify the PCO by letter of this agreement. The ACO will ensure that the contractor identifies the last voucher submitted under each order as a final or completion voucher. The final voucher for each order will then be approved by the ACO and transmitted to Comptroller for payment and issuance of the Final Payment Notice (NLA) and Contract Completion Statement (PK9). Upon completion of the last order, the ACO will request the contractor to submit one assignment of refunds and one claim release, and the auditor will be requested to provide only one contract audit closing statement for the total contract. Use of this procedure can preclude completed orders from becoming overage pending completion of audit and closeout procedures for the total contract.

d. Occasionally, orders will be received for administration where the contract/agreement has been retained by the purchasing activity. Under such circumstances, orders will be closed in accordance with 4.804–4/4.804–5.

4.804–9 Terminated Contracts

a. *Termination for Convenience*

(1) *Complete.* Upon complete termination of a contract for the convenience of the Government, the ACO will retain responsibility for those close-out actions involving patent and royalty reports and disposition of classified material (see 4.4–4(h)). Upon receipt of the termination notice, the ACO will immediately notify the DCASR TCO by telephone. He will then promptly furnish Comptroller and the TCO a copy of the notice. The ACO will also provide the TCO with a copy of DD From 1597 indicating in the "Action Completed" column, when applicable, the completion date for disposition of classified material and for actions related to patent and royalty reports. Upon receipt of the termination notice from the ACO, Comptroller will input data into the mechanical system which will cause the contract to move into the CAR part A, section 3. Upon completion of all termination actions, including plant clearance, the TCO will complete the "Action Completed" column of DD Form 1597 for all actions which are his responsibility, sign under "Remarks," and forward the form to the ACO together with the completed termination case file. Upon receipt of the FIN PAY NLA and completion of all closing actions, the ACO will

process the FIN PAY NLA marked "Final" to the DS&FM CAR Clerk or CAO Terminal. As a result, the Final PK9 will be transmitted to the PO and contract moved to section 5 of the CAR.

(2) *Partial.* Upon receipt of the termination notice the ACO will immediately notify the DCASR TCO by telephone. He will then promptly furnish DS&FM, and the TCO a copy of the notice. When the nonterminated part of the contract is physically completed, the contract will be processed to section 2 of the CAR. In the event final settlement of the terminated portion has not been effected, the ACO will request movement to section 3 of the CAR. The TCO will forward DD Form 1597 with the completed termination case file to the ACO upon completion of all termination and related plant clearance actions. Subsequent closeout action will be in accordance with subparagraph (1) above.

b. *Termination for Default (Complete or Partial).* If a contract is completely terminated for default or if the nonterminated portion of such a contract is physically complete, the contract will be moved to section 2 of the CAR. If the nonterminated portion is not complete, the contract will remain in section 1 of the CAR and will be processed normally upon completion of the nonterminated portion. Upon receipt of the termination notice from the PCO, DS&FM will input data into the mechanical system which will cause the contract to move into section 2 of the CAR. The ACO will maintain liaison with the purchasing office and will be responsible for initiating closeout action (see 4.4-4(h) and 49.4). In the event the contract, due to changed conditions, subsequently meets the definition of a dormant contract (see paragraph A-100.3a(3)), it will then be moved to section 3 of the CAR by the ACO. When all actions required of the DCAS office have been completed, the ACO will forward a DD Form 1593 marked "Final" (see 4.804-4d(2)) to the DS&FM CAR Clerk or CAO Terminal for processing. For aging purposes the date of termination notice becomes the FAD.

c. *CAR Part B Contracts.* All contracts in part B which are terminated will be moved to part A by DS&FM.

4.804-10 Corrections/Cancellation of Contract Completion Statement (PK9) and/or Unclosed Contract Status (PKX) Report

a. *Corrected Contract Physical Completion Reports.* In the event that a corrected DD Form 250 is received on a contract which was previously reported as physically complete, or upon ACO's determination that contract was moved to section 2 of the CAR in error, DS&FM will remove the final shipment indicator from the ODSS and move the contract back to section 1 of the CAR. If a valid date is in the Physically Completed field of the R2 Remark of the CAD, the physical completion date will be reestablished in the CCN Suspense Record, and the computer will create an interim or final PK9, as applicable.

b. *Corrected Final Payment Reports.* In the event that a corrected final invoice or additional invoices are received on contracts which were previously reported as complete or final and a PK9 was issued to the PO, DS&FM will manually prepare a cancellation PK9 to be transmitted to the PO. The next invoice processed as a final invoice will cause a PK9 and "FINAL PAY" NLA to be generated with the correct date of final payment and voucher number.

c. *Corrected Contract Closing Action Report.* In the event the ACO determines that an NLA or DD Form 1593 was processed as "final" in error, he will withdraw the ACO file copy and annotate it to reflect the correct situation, i.e., NLA-complete the column "EST-COM DATE," "TRAN STATUS—D", DD form 1593-complete the *Corrected Final Closeout Notice* portion (see paragraph 4.804-4d(2)). He will also annotate the document "Request cancellation of Final PK9" and sign it. The DS&FM CAR Clerk will cancel the final Contract Completion Statement PK9, submit a new interim PK9 and where applicable generate a revised "FIN PAY" NLA for annotation upon contract closeout.

4.804-11 Contract Closing Action Status Requests/Reply (NLA) Directed to DS&FM. In addition to the NLA, Notice of Contract Final Payment, the ACO may receive NLAs which reflect a computer-generated message direct to DS&FM on overage contracts. Following is a description of NLA messages the ACO may receive:

Message	Type of Notice Message Description
CONTRACT REACTIVATED	FIN PAY NLA cancelled. A cancellation PK9 will also be generated to the PCO.
OVERAGE FOR PAYMENT	Overage on payment. Contract is overage, but final payment has not been processed.
WAITING PHYS COMP	Initial NLA Notice that final payment has been processed but there is no record of final shipment.

4.804-12 Summary Reports

a. The "Outstanding NLA List" may, at local option, be produced at the end of the month. The "Outstanding NLA List" reflects NLAs outstanding for 30 days or more. It is printed in the same format as the NLA Notice.

4.804-13 Coordination/Assistance Available from HQ DLA. When contracts are overage due to delayed settlement to final overhead rates by either Tri-Service negotiation or audit determination, or due to delays in the completion of contract audit closing statements (final audits), the DCASR should take appropriate action in accordance with paragraph 42.7-13.

5.303 CONGRESSIONAL NOTIFICATION, CONTRACTUAL ACTIONS OF $3,000,000 OR MORE

5.303-1 References

a. FAR 5.303, Announcement of contract awards.

b. DFARS 5.303, Announcement of contract awards.

5.303-2 General

a. Purchasing activities of the Military Departments and DLA report all contractual actions in excess of $3,000,000 including those issued by DCAS CAOs to Congress in accordance with referenced procurement directives. The procedure set forth below will be followed in those situations where DCAS CAOs issue contractual actions of $3,000,000 or more when delegated by FAR 42.3, or the PCO.

b. Contractual actions for purposes of the congressional notification requirement include those which obligate funds of $3,000,000 or more, such as contract modification, orders placed against requirements or indefinite delivery type contracts, orders issued against BOAs, provisioning orders and orders issued against time and material and labor hour contracts.

5.303-3 Procedures

a. Prior to issuance of any contractual action (as defined in paragraph 5.303-2b above) by a DCAS CAO, the ACO will assure that the information in subparagraph b below is provided to the purchasing activity by message not later than 1600 hours, five working days prior to the date the contractual action is scheduled for execution. The ACO shall request and receive a clearance (indicating that appropriate congressional notification has been made) from the PCO prior to awarding the particular action.

b. Information to be submitted to the purchasing activity is enumerated below and, prior to award, all correspondence, messages, etc., containing this information should be marked "For Official Use Only."

(1) Name and address of purchasing activity.

(2) Proposed release date.

(3) Contract number and number of modification, order, etc.

(4) Type of contract, e.g., firm fixed price, cost-plus-incentive fee, and face value of contract at time of award (not applicable to BOAs).

(5) Contract amount previously obligated (prior to instant contractual action).

(6) Amount obligated by the contractual action being reported (estimated amount if unpriced order).

(7) Name and location of proposed contractor (including street address, county, state and ZIP code) and size of business, i.e., large or small, and labor surplus designation.

(8) Name and location (complete address) of facility to perform contract. Indicate if a division or affiliate of contractor in subparagraph (7) above.

(9) Purpose of contractual instrument, e.g., additional work or provisioning. Include brief description of item and quantity to be awarded.

(10) Office executing the action and name and telephone number of official in DCAS field activity familiar with award.

(11) Number of concerns solicited and number of concerns submitting bids/proposals.

(12) Foreign Military Sales information and whether it relates to classified or unclassified FMS; for unclassified sales, the country or countries concerned should be identified.

(13) Statement of whether EEO clearance has been obtained.

(14) Information as to any proposed local news release or any local congressional interest.

c. Since these data are used to provide information outside of DoD, accuracy is of paramount importance. Further, any changes to the information supplied to the PCO, especially with regard to the proposed date of execution of the contractual action, will be promptly submitted by the CAO by message or telephone to the activity receiving the original notification information.

d. Information to be released in connection with classified contractual actions will be cleared through the cognizant security office prior to release.

6.5 COMPETITION ADVOCACY

6.5-1 References

a. FAR Part 6, Competition Requirements.

b. Competition in Contracting Act (CICA) (PL 98-369).

c. DLAR 8000.2, DCAS Customer Relations Program.

d. DLAR 4105.17, DLA Competition Advocate Program.

e. DFARS clause 52.217-7270, Identification of Sources of Supply.

6.5-2 General. The cited references provide the direction and guidance to assure that Competition Advocates are designated at the agency and activity level. The role of DCAS Competition Advocacy is to encourage full and open competition through enforcement on contract provisions, interface with procuring activities on prime DCAS-administered contracts, and interface with prime contractors on subcontracting opportunities. DCAS competition advocacy actions will focus on:

a. Consent to subcontracts.

b. Insurance/pension reviews.

c. Contractor purchasing system reviews.

d. Transportation volume movement reports.

6.5-3 Implementation

a. Each Region Commander will appoint a Region Competition Advocate. Competition Advocates will report directly to the Contract Management Director. To assure that competition advocacy initiatives are carried out at the lowest levels of the field organization, the Region Commander will designate a Competition Executor at each CAO.

b. At the CAO level, functional specialists should refer competition advocacy issues to the cognizant ACO. The ACO will take appropriate action. This may involve coordination with the PCO or the contractor.

c. Support will be given to the Services when DFARS clause 52.217-7270 has been included by the PCO in appropriate contracts. When a PCO requests CAS support, a review and report will be done of the contractor's records and level of compliance.

d. Normally, the decisions of the procuring activity will not be questioned. However, recurring unresolved issues with the same procuring activity which may have a significant cost impact may be addressed during customer visits or through DCAS Competition Advocacy channels with the procuring activity's Competition Advocate.

e. The Competition Advocate will submit a yearly DCASR Competition Advocate Report (RCS DLA(A) 2431(A)) by the fifteenth of the month following the end of the fiscal year to HQ-DLA (DLA-AO).

8.2 RESTRICTED PURCHASES FOR PRESERVATION OF THE DOMESTIC INDUSTRIAL BASE

8.2-1 References

a. FAR 8.2, Jewel Bearings and Related Items.

b. FAR 52.208-1, Required Sources for Jewel Bearings and Related Items.

c. FAR 52.208-2, Jewell Bearings and Related Items Certificate.

d. FAR 42.5, Postaward Orientation.

e. DFARS 42.5, Postaward Orientation.

f. DFARS 8.73, Miniature and Instrument Ball Bearings.

g. DFARS 8.74, Precision Components for Mechanical Time Devices.

h. DFARS 8.75, High-Purity Silicon.

i. DFARS 8.76, High Carbon Ferrochrome (HCF).

j. DFARS 8.78, Forging and Welded Shipboard Anchor Chain Items Used for Military Application for Combat and Direct Combat Support Items.

k. DFARS 52.208-7000, Required Sources for Miniature and Instrument Ball Bearings.

l. DFARS 52.208-7001, Required Sources for Precision Components for Mechanical Time Devices.

m. DFARS 52.208-7002, Required Sources for High-Purity Silicon.

n. DFARS 52.208-7003, Required Sources of HCF.

o. DFARS 52.208-7005, Required Sources for Forging and Welded Shipboard Anchor Chain Items.

8.2-2 Policy. To ensure the continued existence of an industrial mobilization base necessary for national defense and in the public interest, the purchases of jewel bearings, miniature and instrument ball bearings, precision components for mechanical time devices, high-purity silicon, high carbon ferrochrome, and forging and welded shipboard anchor chain items are restricted to United States, or United States and Canadian, manufacturing sources in accordance with the applicable clause cited in references b. and k. through o. Exceptions to the use of United States or Canadian sources for purchases of the above commodities are covered in the applicable FAR or DFARS citations.

8.2-3 Procedures

a. Contract administration procedures common to restricted purchase clauses include:

(1) *Postaward Orientation.* The ACO, assisted by team members, should consider postaward orientation on all contracts which contain the clauses discussed above. Procedures for accomplishing the varying methods of postaward orientation are provided in part 42.5 and FAR/DFARS 42.5.

(2) *Subcontract Requirements.* The ACO will establish procedures and controls to ensure contractors include the applicable clause in all subcontracts for items which require jewel bearings, miniature and instrument ball bearings, precision components, etc. If it is determined that supporting administration is required for surveillance purposes, the ACO will process a delegation to the cognizant CAO (see part 42.204).

(3) *Granting of Waivers.* All the clauses discussed in this section provide for the granting of waivers. Depending upon the individual clause the PCO, or ACO when authorized or delegated, may waive the use of required components upon the written request of the contractor. The fact that domestic items cost more is not justification for a waiver. Generally, waivers will be granted only to the extent and for the period of time necessary to permit the contractor to acquire and use the domestic items. Specific instructions for granting of waivers are contained in the applicable contract clause.

(4) *Verification of Contractor Compliance.* The QAR is responsible for making the necessary at-plant checks to verify contractor compliance with the requirements of these clauses.

b. Additional contract administration procedures peculiar to the jewel bearing and precision components clauses are discussed below.

(1) *Jewel Bearings*

(a) The ACO, assisted by the QAR, when necessary, is responsible for assuring that all requirements of the clause are met.

(b) CPSRs may be used in some instances as the basis for administering the jewel bearing requirements of the contracts. However, since CPSRs do not include all contractors having contracts which contain the jewel bearing clause, these reviews cannot be used as the sole means of administration. In addition, since CPSRs are directed toward the prime contractor's operations, they would not indicate the extent to which subcontractors, responsible for acquisition of jewel bearings, are utilizing the William Langer Jewel Bearing Plant.

(c) If review of a contract received for administration reveals jewel bearing requirements and the jewel bearing clause has been omitted, the ACO will immediately notify the PCO and request the contract be modified to include the clause. The ACO, if delegated, may issue such modification.

(d) If the contract contains the jewel bearing clause and a copy of the contractor's certification is not received, the ACO should request it from the PCO. The information provided in the contractor's certification should be used by the ACO as an aid in administration of the clause.

(2) *Precision Components for Mechanical Time Devices.* Contracts received which contain this

clause will be reviewed by all functional elements to determine whether items to be delivered are included in the Federal Supply Classes listed in FAR 8.203-1(b). If so, the following procedures will be followed:

(a) The ACO, in addition to the general procedures discussed in subparagraph a above, will:

(1) When applicable, ensure subcontractor invoices are checked for the certification that the precision components were manufactured by domestic/Canadian sources.

(2) Obtain a listing from the PCO of components considered to fall under the clause where uncertainty exists within the CAO concerning which components are to be considered precision components under the clause. The PCO, when requested can also supply a list of subcontractors who have previously produced precision components.

(3) Serve as the focal point to report all deviations and noncompliances to the PCO.

(b) The IS will, when requested by the buying activity, submit a report through the ACO identifying each subcontractor or supplier currently furnishing precision components, the location of the subcontractor, and other pertinent information such as the component or part involved, the quantity being supplied, and the delivery rate.

(c) The QAR, in addition to procedures noted in subparagraph a(4) above, will request the ACO to obtain from the PCO a listing of components considered to be precision components and their suppliers if the components and suppliers are not identified in the contract.

(d) The payment office will, in those cases where the contract so requires, assure that invoices submitted for payment contain a contractor certification that precision components contained in the items being furnished were manufactured by domestic/Canadian suppliers.

8.2-4 Contractor Violations of Contract Requirements. The ACO should request an investigation by functional elements (usually Quality Assurance) when he has reason to believe the contractor may not be purchasing or using the required domestic components in end items. If the results of the investigation show the contractor is not complying with contract requirements, the ACO will immediately so advise the contractor and request that he order and use the required components for all current contracts. Increased contractor costs, resulting from the purchase of domestic items, will not be processed as an equitable adjustment under the changes clause since no change has been ordered. Additionally, the ACO will caution the QAR not to accept any items with foreign components until authorized by the PCO or ACO when delegated. If after 30 days, the ACO determines that the contractor is still not complying with the applicable contract clauses, the PCO should be so notified and requested to advise the ACO of his proposed course of action.

9.1 PREAWARD SURVEYS AND POSTAWARD FINANCIAL SURVEILLANCE

9.1-1 References

a. FAR 9.1, Responsible Prospective Contractors.

b. FAR 32, Contract Financing.

c. DFARS 9.106, Preaward Surveys.

d. DFARS 9.105, Contractor Qualifications-Procedures.

e. DFARS 32, Contract Financing.

f. DFARS 42.270, Contract Requiring Performance of Contract Administration Services (CAS) on Military Installations.

g. DAR 1-900, Responsible Prospective Contractors.

h. DAR 20-705, Contracts Requiring Performance of Contract Administration Services (CAS) on Military Installations.

i. DAR Appendix E, Defense Contract Financing Regulations.

j. DAR Appendix K, Preaward Survey Procedures.

k. DLAM 8300.1, Production Manual for Contract Administration Services, part 2.

l. DLAM 8200.2, Quality Assurance Support Manual for Contract Administration Service, section V, part 1.

m. Financial Analysis Training Guide for Preaward and Postaward Financial Analyses, September 1978.

9.1-2 General

a. The production element has the primary responsibility for conducting PASs of prospective contractors. The PAS monitor will forward a copy of each survey request (SF 1403, Preaward Survey of Prospective Contractor—General) to the Chief, Contract Administration element, for information or comments, as applicable. In addition, the monitor will forward a copy of the request (SF 1403) direct to the Financial Services element which is responsible for determining the prospective contractor's financial capability and completion of SF 1407, Preaward Survey of Prospective Contractor—Financial Capability. When the PAS request involves a reimbursable review (e.g., for a civilian agency or foreign government) the PAS monitor will provide the analyst with the Document Control Number. If the PAS request includes a requirement for an accounting system review, the monitor will also furnish documentation concerning the reimbursement to the price/cost analyst (DLAM 8300.1, paragraph 2-102n). The analyst transmits a copy of this information to the auditor when a SF 1408, Preaward Survey of Prospective Contractor Accounting System, is requested (see paragraph 16.104-4).

b. All incidents of unsatisfactory performance by contractors, including deficient administrative procedures or practices, should be documented in the suppliers' miscellaneous files maintained by the contract Operations Files Branch (see paragraph S2-100 6c).

c. The price/cost analyst may participate as a member of the onsite PAS team when a complete initial PAS is being conducted, or when otherwise considered appropriate. If the initial PAS is for financial capability only, the financial analyst may elect to meet the prospective contractor and discuss the financial resources required to perform under the proposed contract.

d. In completing SF 1407, the price/cost analyst will obtain financial data from the prospective contractor and from other sources as necessary. When required, credit analysis service reports are available from commercial organizations. Postaward financial surveillance can be accomplished by use of the prospective contractor's periodic financial statements and credit analysis service reports. Each DCASR is responsible for obtaining the necessary credit analysis services.

e. When special financial data, other than that provided on PASs is requested by the contracting office, such data will be furnished within 24 hours after receipt of request, or within the suspense date established by the PCO. If the financial data cannot be furnished within 24 hours, or by the established suspense date, an acceptable date will be arranged with the requesting office, which shall be the earliest possible date that can be met.

f. The price/cost analyst shall be responsive to PAS requests for proposed contracts where the work is to be performed on military installations. The PAS monitor and Purchasing Office will jointly determine the scope of the survey and individual responsibilities.

9.1-3 Preaward Survey Procedures

a. *Participation by ACO.* The Chief, Contract Operations Branch, upon receipt of a copy of SF 1403 from the PAS monitor, will immediately notify the ACO of the pending PAS. If the ACO has information which could significantly impact on the evaluation of the prospective contractor, appropriate comments/recommendations should be forwarded through the Chief, Contract Operations Branch to the PAS monitor. An information copy of these comments/recommendations should be forwarded to the price/cost analyst. ACO participation in

PASs is optional and negative responses to the PAS monitor are not required.

b. *Determining Adequacy of Contractor's Accounting System.* The procedures to determine the adequacy of a contractor's accounting system for PASs are outlined in paragraph 16.104–4.

c. *Determining Financial Capability.*

(1) A PAS register will be established for recording all financial capability analysis cases performed. DLA Form 1188, Preaward Financial Analysis Case Register, will be used for this purpose.

(2) The price/cost analyst will review the prospective contractor's financial data and develop a sound decision on the contractor's financial capability. The contractor's current period and first and second prior fiscal year financial statements (balance sheet, profit and loss statement, and statement of changes in working capital) should be requested if this information is not available in the files. The analyst should also request the contractor's cash flow projection if the financial statements do not show sufficient working capital to complete the prospective contract. Where the prospective contractor requires additional funds to improve financial capability, the price/cost analyst should evaluate the contractor's method of financing the proposed contract. If sources of outside financing (other than the Government) are indicated, the availability of funds must be verified. In doing so, the price/cost analyst shall request the contractor to obtain and provide the financial statements of individuals or other companies providing the additional funds required to determine the financial capability of the contractor's lenders. The term(s) of agreement(s) between the lender(s) of funds and the contractor should be analyzed. The price/cost analyst shall complete the SF 1407. Although the SF 1407 is generally self explanatory, the following procedures should be followed:

(a) Section IV, Block 3—If a D&B credit report is used in the review, or available in the file, the contractor's nine-digit DUNS (Data Universal Numbering System) number should be included in Block 3. The DUNS number is listed on the first line after the heading, as follows "DUNS: XX-XXX-XXXX".

(b) Section IV, Blocks 3 and 4—If the credit rating received from a commercial financial service of credit firm is expressed in symbolic terms, the rating should be explained in narrative form. For example, a Dun and Bradstreet rating of BB2 is interpreted to mean that the prospective contractor's estimated net worth is between $200,000 to $299,999 and the credit rating is "good". The narrative explanations will assist preaward report recipients in better understanding financial recommendations.

(c) Section IV Block 6—Block 6 of the SF 1407 should be marked Not Applicable (NA) unless the price/cost analyst happens to become aware that the proposed contract price is significantly under or overpriced. In such case, the price/cost analyst will complete block 6 and provide appropriate rationale in general terms (i.e., not a price/cost analysis).

(d) Section VI Block 2—In completing block 2, the price/cost analyst will provide sufficient details and rationale to fully support conclusions and recommendations. State any known financial (or contractual) problems and their probable impact on the prospective contractor's financial capability. If no problems are known to exist, so state. Identify significant trends in the contractor's financial ratios (e.g., liquidity, leverage, activity, profitability, etc.) and explain their probable impact on the contractor's financial capability. Provide comments concerning the contractor's financial ratios as compared with industry averages if such information appears to have bearing on award of the contract.

(3) The completed and signed SF 1407 will be forwarded through the Chief of the Financial Services element performing the review to the PAS monitor for inclusion in the PAS report. If additional significant financial data or information is subsequently received, the price/cost analyst will immediately prepare and forward an updated SF 1407 reflecting the probable impact of the data on the prospective contractor's financial capability. The supporting financial files will be retained by the Financial Services element. The composition and number of work papers required for each analysis depends on the complexity of the individual financial review. It is mandatory that the work papers for each analysis include adequate support for the analyst's recommendations and conclusions.

(4) In addition to the PASs that request financial capability analysis, the PAS monitor will provide the Financial Services element with an information copy of PASs SF 1403 where no financial capability analysis has been requested. The price/cost analyst will review all information copies received and promptly advise the PAS monitor when, because of known unfavorable financial information, a financial capability analysis report is considered necessary. If financial capability analysis is to be provided, a case number will be assigned and SF 1407 will be prepared and forwarded to the PAS monitor within the time limits specified. Information copies not requiring a financial capability analysis will not be included in the PAS register nor counted as a case in management reports.

(5) In performing their portions of a PAS, if a team member determines that significant additional capital resources will be required to perform the proposed production or services contract, they will immediately advise the price/cost analyst (see

DLAM 8300.1, paragraph 1-103f(2)(b)(6). The price/cost analyst will consider the financial impact of these findings to determine if they adversely affect the prospective contractor's financial capability to perform on the proposed award. The price/cost analyst will include appropriate comment regarding the need for additional capital resources on the SF 1407.

(6) Copies of SF 1407 issued under a previous survey report may be submitted provided the information is still valid. In such case, a statement will be included that the information is current and applicable to the proposed contract.

(7) Upon the specific request of the PAS monitor, the cognizant Contract Branch will review the Supplier's Miscellaneous Files for the purpose of determining if there is any additional information pertinent to a determination of responsibility of an offeror or subcontractor.

(8) Bank Commitment Financing. If the prospective contractor's performance on the contract is contingent upon receipt of a new or additional bank financing, a bank commitment letter similar to that shown in paragraph 9.1-4 is required. Paragraph 1 of the sample letter may be modified to fit the peculiar circumstances of each case, or to conform to a particular bank's practices. However, paragraph 2 should normally be used without change in all cases. If the letter received from the bank appears to be a qualified commitment, the price/cost analyst will request that Counsel review the letter for acceptability.

(9) Guaranty and Subordination Agreements may be used when financial conditions warrant.

(a) For individual contracts, DLA Form 621, Guaranty Agreement for Corporate Guarantor, and DLA form 622, Subordination Agreement, will be used. When more than one contract is involved, DLA Form 619, Guaranty Agreement for Corporate Guarantor, and DLA Form 620, Subordination Agreement, are required. On DLA Form 619 and DLA Form 620 the words "Department of Defense (DAR 1-201.6)" will be inserted as the Government department involved. The Guaranty Agreement Forms for Corporate Guarantor (DLA Forms 619 and 621) may be modified so that they can be used for sole proprietors or partnerships. Before accepting a guaranty or subordination agreement which differs from the DLA Forms, or has been modified as noted above, an opinion of legal sufficiency will be obtained from the DCASR Counsel.

(b) All corporate guarantors will be required to obtain a statement from their corporate counsel indicating whether the corporate guarantor has the authority under the laws of the State in which the company is incorporated and pursuant to its charter, to enter into such an agreement. This statement will be attached to the guaranty agreement.

(c) If the price/cost analyst determines that a Guaranty or Subordination Agreement is necessary, the contractor will be requested to obtain such Guaranty or Subordination Agreement. The prospective contractor will also be requested to obtain a copy of the prospective guarantor's current financial statements. The price/cost analyst will review the financial data to determine the financial capability of the prospective guarantor and provide appropriate comment in Section VI, Block 2 of SF 1407.

(d) When the Guaranty or Subordination Agreement is received, the price/cost analyst will review the agreement for accuracy and completeness. Seven executed copies are required. If the agreement contains other than the approved wording on the forms referred to in subparagraph (a) above, it will be reviewed by DCASR Counsel for legal sufficiency. The price/cost analyst will retain one copy of the agreement and forward six copies to the PAS monitor with the completed SF 1407, noting in Section VI, Block 2 that if a contract is awarded, the PCO should return five copies of the agreement to the ACO for acknowledgment and distribution. Distribution of Guaranty and Subordination Agreements shall be accomplished as follows: the ACO will retain one copy for the official file, and distribute one copy to the PCO, Guarantor or Creditor (if a Subordination Agreement), Contractor, and price/cost analyst.

(e) When subsequent awards are anticipated under a continuing type Guaranty or Subordination Agreement (DLA Forms 619 or 620), the price/cost analyst will notify the Guarantor or Creditor that in the event a contract is awarded, the Government will continue to rely on the support provided to the contractor, by the terms of the agreement. Copies of this notification will be distributed to the contractor the PCO, and the ACO. One copy will be retained in the financial analysis files.

(f) If the PAS reveals the existence of a security interest against the prospective contractor's inventory, the price/cost analyst will request the prospective contractor to obtain a Subordination Agreement from the holder (creditor) to protect the Government's title to future progress payment inventory.

(10) In performing the PAS, the price/cost analyst shall ascertain whether the prospective contractor is included on the consolidated List of Contractors Indebted to the United States (see FAR 32.108). A copy of the list is furnished to each DCASR (for subsequent redistribution to operational price/cost analysts) by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana. If the prospective contractor is on the list, an appropriate comment shall be provided in the report of recommendations, Section VI, Block 2 of SF 1407.

(11) When it appears that the potential contractor is approaching, or is in some stage of bankruptcy, the price cost analyst should contact the Bankruptcy Court to determine if bankruptcy has been filed. The offeror or creditors may be filing for a Chapter VII LIQUIDATION or a Chapter XI REORGANIZATION with either the debtor or a trustee in possession. The price cost analyst must be particularly careful in analyzing the financial capability of a contractor involved in Chapter XI proceedings. Filing for a reorganization does not automatically render a contractor financially nonresponsible. However, as with all preaward surveys, affirmative recommendations must be based on information which indicates the prospective contractor has sufficient working capital to complete the intended contract. The price cost analyst should interface with, and coordinate the final financial recommendation with the DCASR Office of Counsel when a financial preaward survey is performed on a contractor in bankruptcy. Bankruptcy proceedings under Chapter VII or Chapter XI should be noted in Section VI, Block 2 of the SF 1407 and fully explained.

d. *Use of Standard DLA Forms.* The following DLA forms have been standardized for use in support of the preaward survey financial analysis functions:

(1) DLA Form 619, Guaranty Agreement for Corporate Guarantor, is used when more than one Government contract will be involved.

(2) DLA Form 621, Guaranty Agreement for Corporate Guarantor is used on a single contract.

(3) DLA Form 620, Subordination Agreement is used when more than one contract will be involved.

(4) DLA Form 622, Subordination Agreement, is used on a single contract.

(5) DLA Form 1188, Pre-Award Financial Analysis Case Register, is for recording all PAS financial analysis cases performed.

(6) DLA Form 1529, Financial Data Record, is used to record the prospective contractor's latest periodic financial data received. If a form is used for maintaining a record of such information, the DLA Form 1529, shall be used.

9.1-4 Sample Bank Commitment Letter

Date

Defense Contract Administration Services Region

Attention

Gentlemen:

In the event (*name of prospective contractor*) is awarded a contract pursuant to Solicitation No. .... (IFB, RFP, or RFQ No.) in the amount of $.................................., we will extend to (*name of prospective contractor*) such financing not to exceed $.................................. for the performance of said contract.

It is understood that the Government will rely upon this commitment in making an award of the above contract to (name of prospective contractor).

Sincerely,

....

....

9.1-5 Certification of Financial Statements

All financial statements obtained for preaward surveys and/or postaward financial surveillance purposes should bear a certification statement as to the accuracy and completeness of the financial information furnished. For Certified Public Accountant audited financial statements obtained, the firm's normal certification statement provided shall be considered satisfactory. For company prepared financial statements and those prepared by an independent accountant, the certification statement shall be signed by a responsible officer or principal of the company, or by the independent accountant who prepared the statement. The following sample certification statement shall be considered sufficient.

"This is to certify that to the best of my knowledge and belief the financial data and the accompanying notes to the financial statements are accurate and complete as prepared from the company's general accounting records, and that the descriptions and amounts herein accurately reflect the company's financial status as of (Date.)"

Date ....

Signed ....

TITLE

9.1-6 Postaward Financial Surveillance Procedures

a. Since a contractor's continued performance is closely related to financial capability, postaward surveillance will be performed on contractors listed in the CAR, to the extent that the contractor's financial condition warrants continuous surveillance (See 32.108). In determining the appropriate level and frequency of surveillance the price/cost analyst should consider the financial condition of the contractor, whether the contractor is receiving or has requested Government financing (e.g., progress payments, advance payments, etc.), the financial history of the contractor (e.g., consistently good, deteriorating), known performance problems which could impact the financial structure, etc. The importance of early detection and immediate reporting of contractors encountering financial problems cannot be overemphasized. In consonance therewith, Financial Services personnel are expected to maintain close surveillance over contractors with marginal financial capability and when there is reason to question their financial capability, the ACO will be notified immediately. In performing postaward surveillance, the Financial Services element will utilize the financial report, SF 1407, and current financial information. Financial statements (balance sheets and profit and loss statements, statements of backlog information, and cash flow statements as determined necessary) will be requested from contractors on a monthly, quarterly, semiannual or annual basis, as deemed appropriate in individual cases. For example, quarterly reviews of major contractors in good financial condition are rarely justifiable. On the other hand, if a contract is awarded notwithstanding a negative preaward survey based on financial conditions, the price/cost analyst should maintain close surveillance of the contractor. Financial surveillance of marginal contractors will provide a better understanding of the contractor's financial weaknesses and potential need for financial assistance. In such a situation, the price/cost analyst should discuss with the ACO the feasibility of requesting the production element to provide closer surveillance of the contractor's performance.

b. Postaward reviews should be documented in the contractor's file. DLA Form 1530, Postaward Financial Surveillance Report, will be provided to the ACO in those instances when a formal written report is warranted, e.g., when the contractor's financial condition has deteriorated. A postaward financial surveillance register will be established for recording all postaward financial surveillance cases performed whether or not a DLA Form 1530 is issued. DLA Form 1189, Postaward Financial Surveillance Register, will be used for recording all cases performed by the Financial Services element responsible for determining a contractor's continuing financial capability to perform the contract to completion.

c. If a request is received for termination of a Guaranty or Subordination Agreement, the ACO will request advice of the price/cost analyst as to the current financial status of the contractor prior to taking action on the termination request. If the Guaranty or Subordination Agreement is terminated, the PCO will be furnished a copy of the termination document. When a contract is being investigated for possible termination for default and the contract is supported by a Guaranty or Subordination Agreement, the ACO will remind the PCO of the existing agreement.

d. If postaward financial surveillance reveals the existence of a security interest against a contractor's inventory, the price/cost analyst will immediately notify the ACO who will be responsible for taking the necessary action to obtain a Subordination Agreement (see Part 32.595).

e. During contract performance, representatives of another DCAS functional element may notify the ACO or Financial Services element that the contractor is experiencing significant performance problems which could have a serious impact on financial capability to perform all contracts to completion. In such cases, the price/cost analyst will evaluate the situation to determine its probable impact on the contractor's financial capability. If the financial impact is serious, the price/cost analyst will furnish the ACO a written Postaward Financial Surveillance Report (DLA Form 1530) on the status of the contractor's financial condition (see FAR 32.503-2, FAR 32.503-4, FAR 32.503-5).

f. In performing postaward financial surveillance responsibilities, the price/cost analyst shall ascertain whether the contractor is included on the consolidated List of Contractors Indebted to the United States (see FAR 32.108). A copy of the list is furnished to each DCASR (for subsequent redistribution to operational price/cost analysts) by the U.S. Army Finance and Accounting Center, Indianapolis, IN. If the contractor is on the list, the price/cost analyst shall complete and forward to the ACO a Postaward Financial Surveillance Report, DLA Form 1530.

g. Use of Standard DLA Forms. The following DLA Forms have been standardized for use in support of the postaward financial surveillance functions:

(1) DLA Form 1189, Postaward Financial Register, is for use in recording all postaward financial surveillance cases performed.

(2) DLA Form 1528, Financial Surveillance Control Card, is for use as a "tickler" file card to establish a system and control for periodically performing postaward financial surveillance.

(3) DLA Form 1530, Postaward Financial Surveillance Report, is for use in preparing a written report on the results of postaward financial surveillance performed.

(4) DLA Form 1619, Postaward Subordination Agreement, is for use when postaward financial surveillance reveals the existence of a security interest against a contractor's inventory involving progress payments (see Part 32.595).

9.1-7 Capability Surveys

a. On occasion, contracting activities may submit a SF 1403 request for financial information on a firm even though a solicitation is not contemplated. These surveys, which are called capability surveys, facility capability surveys, or general purpose surveys, are conducted to identify potential sources or to update information on bidders lists. If the price/cost analyst has any doubts as to the exact nature of the survey, the PAS monitor should be requested to obtain clarification from the buying activity.

b. Preaward surveys procedures and guidance (9.1-3) should be followed in conducting capability surveys, subject to the limitations in subparagraphs c and d below.

c. Capability surveys generally do not require the same amounts or types of financial data needed for financial analysis reviews performed as part of preaward surveys. Since there is not a solicitation, there is no need for bank commitment letters or guaranty agreements. Financial data should be requested from the contractor only if financial data in the Contract Administration Office files are not adequate for the price/cost analyst to comment on the firm's overall financial condition. When the price/cost analyst requests needed financial data, the contractor should be informed regarding the purpose of the review and advised that data submission is voluntary.

d. Survey results will be reported on SF 1407. Section III, Block 2 and Section IV, Block 6 should be marked Not Applicable. Section VI, Block 1 will not include a recommendation regarding award or no award, but it should include a narrative assessment of the firm's financial condition (e.g. satisfactory, deteriorating).

9.3 FIRST ARTICLES

9.3-1 References

a. FAR 9.3, First Article Testing and Approval.

b. FAR 52.209-3, First Article Approval—Contractor Testing.

c. FAR 52.209-4, First Article Approval—Government Testing.

d. DFARS 9.3, First Article Testing and Approval.

e. DLAM 7000.1, paragraph 50903, subject as above.

f. DLAM 8105.1, paragraph 32.592-3, Postaward ACO Review—First Article Provisions.

g. DLAM 8105.1, paragraph 32.592-4c, Letters of Notification to Contractor, First Article Limitation.

9.3-2 General. First Article testing and approval requirements are imposed when it is necessary to ensure that the contractor can perform in accordance with the contractual specifications, or to ensure the availability of a manufacturing standard. This part covers the procedures to be used by ACOs and Contract Administrators for contracts containing first article requirements.

9.3-3 Initial Contract Review

a. *The Data Base and Invoice Payments.* In the initial review, the ACO should ensure that the first article requirement is properly reflected in the MOCAS data base (R9 remark 14 for the MOCAS 1B system, and Special Contract Provision (SCP) F for the MOCAS II system). This is particularly important as the presence of these codes will ensure that no invoice payments are made by the Comptroller's office until after first article approval and acceptance has been made.

b. *Progress Payments and First Articles.* Costs associated with the first article (and its testing) are eligible for progress payments prior to first article approval. However, such eligibility is not intended to be a "blank check;" PCOs are to include in the contract a limitation on the amount of progress payments that will be made for first article-associated costs. ACOs, in their initial reviews of contracts with first article requirements and progress payments, should verify the inclusion of that limitation. If the limitation has inadvertently been omitted, the PCO should be contacted and be requested to take immediate action to include an appropriate limitation amount, or delegate the authority to do so to the ACO.

9.3-4 Setting Progress Payment Limitations. When authority to set a first article progress payment limitation has been delegated, the ACO is to negotiate the limitation with the contractor, taking into consideration those factors discussed below.

a. Where the first article (or first article test requirement) has been separately priced, that price should generally be used as the basis for setting the limitation amount, e.g., the progress payment rate times the first article price. However, the price need not be the only factor considered (see b. below). As a cautionary note, ACOs should be aware that the Comptroller's office will not "automatically" set a payment limitation amount as a percentage of the first article price. The limitation amount must be set contractually through negotiation.)

b. Where the first article has not been separately priced, the ACO should take into account such factors as "minimum order quantities" that the contractor's suppliers are enforcing. This is appropriate since the primary purpose of progress payments is to help contractors maintain working capital at acceptable levels; and, in fact, that purpose may be kept in mind in setting the limitation amount even where the first article has been separately priced. However, in no case should the ACO allow the Government, through setting too high a limitation, to be put in the position of financing the acquisition of material or components, or commencing production for the current quantity balance prior to first article approval.

9.3-5 Notification Requirements. The FAR requires the CAO to give advance notification to the Government testing or approval activity prior to shipment of the first article test report. The notification constitutes a reminder to the testing or approval activity of the time allowed by the contract for approval or disapproval. The contents of the notification are outlined in FAR 9.307.

a. In DCAS, the ACO is responsible for making the notification. In practice, the QAR will advise the ACO of the expected date of shipment, usually by form IOM. The ACO then makes the formal notification to the testing or approval activity.

b. In those cases where the QAR advises the ACO that the first article is known or suspected to be nonconforming, the ACO, prior to authorizing the shipment of the first article/first article test report, shall:

(1) Notify the PCO that the first article is known or suspected to be nonconforming, including the pertinent facts of the nonconformance(s).

(2) Ascertain from the PCO whether or not he/she still desires shipment of the first article to the designated lab/test facility.

(3) If the PCO does not desire shipment, and the contractor's failure to produce a conforming

first article could cause a delay in the contractual delivery date, the ACO should ascertain from the PCO what corrective action (if any) will be taken as a result (e.g., extend the delivery date for consideration, issue a Show Cause/Cure Notice, etc.).

c. The ACO is to followup with the PCO if approval/disapproval is not received from the testing or approval activity within the time period specified in the contract. As a reminder to the ACO, the Comptroller's office will provide a followup request for acceptance documentation 10 days after the expiration of the contractual period allowed for approval, disapproval or conditional approval.

d. Once approval/disapproval notification is received from the PCO (original to contractor, copy to ACO), the ACO should ensure distribution is made to all other concerned functional elements, e.g., the QAR, Production, Transportation/Packaging, etc.

e. Additionally, the ACO is to ensure that the contract delivery schedule in the MOCAS data base is revised to conform with the delivery schedule established by first article approval or disapproval.

9.3-6 ACO approval of First Articles. Generally, PCOs reserve first article approval authority to themselves. However, occasionally PCOs delegate this authority to ACOs.

a. Approval of first articles is not a "normal" contract administration function, as listed in Far 42.302. Accordingly, PCOs should coordinate with the CAO to ensure the availability of needed resources. If they do not do so, PCOs and, if necessary, their managers should be reminded of the FAR requirements (42.202(c)) to make such coordination.

b. If the necessary resources are available and the first article is to be built to design specifications, the ACO may accept the PCO's delegation to approve the first article. However, any questions regarding the technical data package or the contractor's compliance with the technical requirements should be referred to the buying activity for final decision. (This direction generally applies to First Article Test Requirements as well.)

c. However, ACOs should never accept delegations to approve if the first article is to be built to "performance" or other non-detailed specifications. The PCO, assisted by his technical staff, is better able to grant such approvals.

d. If the contract provides for *conditional* approval of the first article, the ACO is to consult with the PCO and obtain the PCO's concurrence before making such an approval. Inasmuch as conditional approval is not in keeping with requiring total compliance with the contract, the concurrence must come from a responsible individual in the buying organization.

e. Upon approval or disapproval of the first article, the ACO shall notify the contractor in writing. If the approval is conditional, the ACO shall precisely detail those deficiencies noted in the first article which must be corrected for acceptance of the production quantity. Copies of the notification are to be sent to the PCO, interested technical activities specified by the PCO or the contract, and the QAR, Production, Engineering, Transportation/Packaging, etc., as applicable.

9.3-7 Subsequent to First Article Approval. If the ACO becomes aware that the contractor has made any changes to his contractually required manufacturing processes, methods, materials, etc., subsequent to first article approval, he shall promptly advise the QAR and request that immediate corrective action be taken as the QAR deems appropriate. The ACO will keep himself informed of the status of such corrective action, and follow the procedures contained in Part 46.104 of this manual.

9.4 DEBARMENT, SUSPENSION, AND INELIGIBILITY

9.4-1 References

a. FAR 9.4, Debarment, Suspension, and Ineligibility.

b. FAR 9.1, Responsible Prospective Contractors.

c. Far 44.202-2a(13).

d. DFARS 9.4, Debarment, Suspension, and Ineligibility.

e. DAR Section 1, Part 6, Debarment, Suspension and Ineligibility.

f. DAR Section 1, Part 9, Responsible Prospective Contractors.

g. DAR 23-202, Consent to Subcontracts.

h. DLAM 8300.1, paragraph 1-103.a, Ineligible Contractors.

i. Consolidated List of Debarred, Suspended, and Ineligible Contractors, published monthly by GSA.

9.4-2 General

a. It is DoD policy to solicit bids and proposals from, award contracts to, renew or otherwise extend the duration of an existing contract, and approve or consent to subcontracts with responsible contractors only.

b. Each CAO shall obtain and have available the most recent edition of the Consolidated List of Debarred, Suspended, and Ineligible Contractors, which is published by GSA monthly. Each CAO shall also obtain and have available a compilation of the names of companies and individuals proposed for debarment, or recently suspended or debarred, by any component of DoD; this compilation shall be provided to each DCASR through normal distribution channels. Region Commanders shall verify and ensure the timely distribution of debarred contractors listing to cognizant ACOs. The GSA Consolidated List and the DLA compilation shall be consulted prior to granting any approval or consent to placement of subcontracts or to novation or change of name agreements, or to any other contractual action identified in FAR 9.405. If the name of a party to the proposed action appears on the GSA Consolidated List or in the DLA compilation, the contractual action shall not be taken or approved or consented to by the ACO unless and until there has been an appropriate determination by an authorized official (as determined in discussion(s) with DCASR Counsel) that a compelling reason exists to take the action. Questions regarding the GSA Consolidated List, the DLA compilation or any such determination reported to the ACO shall be referred to the Region Counsel for resolution.

c. When a DCASR has forwarded a recommendation for debarment or suspension, then, during the period that the recommendation is under consideration by the activity to which it was referred, no action covered by paragraph a, above, shall be taken by the ACO without prior coordination with the Region Counsel.

9.4-3 Procedures

a. When an ACO or a member of the ACO's team becomes aware of information sufficient to support a reasonable belief that a cause or condition exists which seriously affects the present responsibility, within the meaning of FAR 9.1, of a Government contractor, subcontractor or affiliated company or individual, the ACO shall immediately report the matter to the Region Counsel. The ACO shall provide the Region Counsel with the information outlined in DFARS 9.472-2, to the extent available. Ordinarily, the ACO will accomplish this submission in a DFARS 9.472 report format. The Region Counsel will review the submission, request additional information and supplement it as appropriate, and forward the final DFARS 9.472 report in quintuplicate to the DLA Office of General Counsel (DLA-G).

b. In addition to the information required by DFARS 9.472-2, the report submitted by the DCASR shall include the following:

(i) Dun and Bradstreet reports on the subject(s) of the report, if available;

(ii) all available information concerning the business status of the company, including names of owners, officers and directors, copies of documents of incorporation, etc.;

(iii) the name of the investigating agency or agencies, if any, that is investigating or has investigated either the facts reflected in the DFARS 9.472 report or other aspects of the company's or individual's dealings with the Government; and

(iv) a summary of any criminal investigations, relevant audit reports, legal proceedings (as defined in FAR 9.403, etc.) and proceedings before Boards of Contract Appeals concerning the company or individual.

c. If DCASR records indicate that the subject of the DFARS 9.472 report has or has had contracts with other DLA activities, the ACO shall immediately ensure that the Region Counsel is made aware of those contracts. The ACO shall assist the Region Counsel, upon request, in notifying other affected DLA activities of the proposed recommendation and in furnishing them a copy of the information upon which the recommendation will be based. The DFARS 9.472 report shall indicate such coordination has been effected, when applicable.

d. The Deputy Secretary of Defense, by memorandum dated 5 April 1983 to the Secretaries of the military departments and the Directors of the defense agencies, has stressed the importance of prompt administrative action against contractors engaged in fraudulent or corrupt activities, and has suggested that, in those cases where there is an indictment or a conviction, 30 days should be sufficient time for the military department or defense agency to issue a notice of suspension or of proposed debarment. In order for this timeframe to be met, it is necessary that a recommendation for suspension based upon an indictment or a recommendation for debarment based upon a conviction be prepared immediately following receipt of information concerning the indictment or conviction. Initial notification to the Regional Counsel shall be made by telephone immediately upon receipt of the information. A copy of the indictment, including the criminal docket number and date, or a copy of the conviction judgment order, as appropriate, shall be attached to those resultant DFARS 9.472 reports.

e. The DFARS 9.472 report shall be designated "FOR OFFICIAL USE ONLY" unless the contents of the report warrant a security classification, in which case that security classification will be used.

9.4-4 Actions to be Taken Upon Receipt of Notice of Ineligibility. When an ACO or a member of the ACO's team learns that a company or individual has been added to the GSA Consolidated List, or has been suspended or proposed for debarment by a DoD component, or that a DFARS 9.472 report concerning that company or individual has been submitted by any office and is still under consideration, the pertinent files and records shall be reviewed to determine whether the DCASR has current or has had past contractual relationships (including full or partial delegation of contract administration functions) with that company or individual or known affiliates thereof.

a. If any current or past contracts are located, the ACO shall consider whether the Government may have any basis pursuant to those contractual relationships for recovery of damages from or other claims against the company or individual or affiliates. If it appears to the ACO that there may be such a basis, then information stating the factual basis therefor in as much detail as practicable shall be promptly furnished to the Region Counsel, who will forward it to the DLA Office of General Counsel. Concurrently, the ACO shall ensure that all Procuring Contracting Officers with contracts with an ineligible contractor are promptly notified of the contractor's ineligibility for future contracts and requested to provide any specific instructions to the ACO regarding administration of existing contracts.

b. The ACO shall also determine whether known affiliates of the company or individuals are also listed or named in the action concerned. If the name of an affiliate or individual which is known to the ACO is not so listed or named, then the matter shall be promptly reported to the Region Counsel, including all information concerning the affiliation of the company or individual in as much detail as practicable.

12.1 ACCELERATION OF DELIVERY

12.1-1 References

a. FAR 12.1, Delivery or Performance Schedules

b. FAR 42.302(b)(3)

c. DFARS 12.1, Delivery or Performance Schedules

d. DAR 1-406(c)(1vii).

e. DLAM 8300.1, Production Manual for Contract Administration Services, section 3-500.

12.1-2 Scope. The purpose of this part is to provide a standardized method for processing requests for acceleration of deliveries scheduled under a contract.

12.1-3 Definition. Acceleration of deliveries scheduled under a contract is defined as a change in contract delivery schedules resulting from changed requirements from which it is anticipated that a change in price will result, and which will necessitate a contract modification. A requirement for acceleration of a small quantity of an item or items, resulting from an unanticipated user need, which can be accomplished at no additional cost to the Government or impact upon other programs, is considered an expediting action and not within the purview of this section.

12.1-4 Policy. It is the policy of DoD to execute contracts which specify delivery dates based on the period during which supplies/services will actually be required. As requirements change, it may become necessary to request delivery at a time earlier than cited in the contract.

12.1-5 Procedures. All requests for acceleration should be initially furnished by the PCO by letter or electrical transmission. Requests for acceleration may be processed by the PCO through the ACO, or directly to the contractor with a copy to the ACO. Telephone communication may be used when appropriate, but should be confirmed by the PCO in writing. Requests should contain the following information:

a. Contract number.

b. Contractor.

c. Call/order number, if applicable.

d. Line item number.

e. Original delivery schedule.

f. Desired accelerated delivery schedule.

g. Additional information deemed appropriate.

12.1-6 Evaluation. In all cases, the request for acceleration should provide for a copy of the contractor's proposal to be returned via the ACO to the PCO. The ACO shall review the request for acceleration with the contractor to determine the feasibility of accomplishment of the request within guidelines provided by the PCO, and to permit assessment of the impact on cost and other DoD programs. The ACO shall provide the PCO with a review and evaluation of the contractor's proposal (see part 15.805) and furnish recommendations to the PCO to assist in determining the proper course of action.

12.1-7 Modification of Contracts. Contract modifications resulting from accelerations and decelerations are normally executed by the PCO. Authority to negotiate and execute these contract modifications may be delegated to the ACO in accordance with FAR 42.302(b)(3).

12.2 LIQUIDATED DAMAGES

12.2-1 References

a. FAR 12.2, subject as above

b. FAR 52.212-4, Liquidated Damages—Supplies, Services or Research and Development

c. DAR 1-310, Liquidated Damages

d. DAR 7-105.5, Liquidated Damages

e. DLAM 7000.1, Accounting and Finance Manual, Chapter 12, Claims.

12.2-2 *General.* A liquidated damages clause is incorporated in a contract when the time of delivery or performance is of such importance that the Government may reasonably expect to suffer damages if the delivery or performance is delinquent. This clause provides for the assessment of damages on the contractor for his failure to comply with certain performance of delivery requirements of the contract when the extent of amount of such damages would be difficult or impossible to determine. All functional elements concerned will ensure that all matters relating to liquidated damages are provided priority handling and that all actions taken are completely documented in the official contract file.

12.2-3 Procedures

a. ACOs will ensure that all functional elements are aware of the existence of the liquidated damages clause in a specific contract and controls are instituted to ensure that timely and coordinated actions are taken and properly documented in the official contract file by all functional elements concerned with the administration of the particular contract. Care must be taken to further ensure that untimely actions, or inactions, by a Government representative do not result in hampering the contractor's ability to perform in accordance with the specific requirements of a contract containing liquidated damages provisions.

b. Production representatives will ensure that copies of all plant visit reports and other pertinent documents are routed to the official contract file via the ACO.

c. QARs, upon receipt of a request for inspection, will ensure that their required services are provided in a timely manner. Untimely actions or inactions by the contractor which could possibly result in noncompliance with a performance requirement of the contract will be completely documented. That documentation will be immediately forwarded to the official contract file via the ACO.

d. DS&FM, upon receipt of an invoice(s) covering a shipment(s), under a contract containing a liquidated damages clause, will review the contract file to determine if the invoice covers delayed shipments. Prior to payment, those invoices covering delinquent shipments will be forwarded to the ACO for evaluation. If official contract file does not contain a record of the PCO's determination that payment, as requested, should be made or that an assessment is appropriate, and the amount of the assessment, the ACO will contact the PCO by telephone for the above determination. If the PCO is unable to immediately determine if an assessment is to be effected, the ACO will authorize payment of the contractor's invoice, less the amount in question, and submit a copy of the invoice to the PCO with appropriate recommendation. Appropriate control and followup will be accomplished to assure PCO reply and completion of subsequent actions. Where loss of discount may result, telephone contract from DS&FM to the ACO for his evaluation is encouraged.

e. In some instances, the PCO may delegate authority to the ACO to make the determination regarding assessment of liquidated damages. Such determination may or may not be subject to the PCO's approval.

f. See DLAM 7000.1, chapter 12, concerning ACO responsibilities in the event of a claim by the United States arising under a liquidated damages clauses of a contract.

12.4 VARIATION IN QUANTITY

12.4-1 References

a. FAR 12.4, Variation in Quantity.

b. FAR 52.212-9, Variation in Quantity.

c. FAR 52.212-10, Delivery of Excess Quantities of $100 or less.

d. FAR 52.212-11, Variation in Estimated Quantity.

e. DFARS 12.4, Variation in Quantity.

f. DAR 1-325, Variation in Quantity.

g. DAR 7-103.4, Variation in Quantity.

h. DLAM 7000.1, Accounting and Finance Manual, paragraph 50512.

12.4-2 Scope. This part sets forth procedures for allowing and processing deliveries of quantities of supplies which either exceed or fall short of the quantities specified in fixed-price supply contracts.

12.4-3 General. The variation in quantity clause (FAR 52.212-9(a)) is applicable only if, and to the extent, specified in the contract, and does not in itself authorize variations. When the PCO has considered it appropriate to allow variations, the extent of quantity variation clause (FAR 52.212-9(b)), listing the permissible variation(s) is included in the contract.

12.4-4 Procedures

a. *Processing Variations Permitted by the Contract.* Whenever the quantity delivered by a contractor varies within the limits and for the causes permitted by the contract, the deliveries may be accepted by the appropriate personnel usually responsible for accepting delivery(ies). No action by the PCO or ACO is required either to approve quantities delivered by the contractor or to adjust obligations or quantities within the permitted variation. Additional shipping instructions, if required as a result of a variation, will be requested by the ACO from the procuring activity.

b. *Processing Variations not Permitted by the Contract*

(1) *Excess Quantity.* If the contractor produces an excess quantity under a contract which does not provide for any variation in quantity, or if the quantity exceeds the percentage permitted by the contract, the Government is under no obligation to accept the excess. The contractor should be notified of the excess quantity and requested to submit disposition instructions to the ACO. When the contractor nevertheless requests acceptance of this excess quantity, the matter will be referred to the PCO. If the PCO does not agree, the excess will be returned or tendered to the contractor for disposition at his expense, including all transportation and handling charges. If the PCO agrees, acceptance of the additional quantities will require contract modification. This modification may be issued by the PCO or by the ACO if so delegated and funded by the PCO.

(2) *Short Quantity.* If the contractor requests the Government to accept quantities less than those permitted by the contract, the ACO will consider the reasons for the lesser quantity and coordinate with the PCO as to acceptability. If the PCO agrees that the lesser quantity is acceptable, he will either amend the contract to reflect a lesser quantity or advise the ACO in writing that the contract is considered complete based on the lesser quantity. The ACO will amend the contract if the PCO advises in writing that the contract is considered complete based on the lesser quantity. The ACO will ensure that the payment office is provided a copy of the modification.

15.7 MAKE-OR-BUY PROGRAMS

15.7-1 References

a. FAR 15.7, Make-or-Buy Programs.

b. DFARS 15.7, Make-or-Buy Programs.

15.7-2 General. The PCO is responsible for establishing the make-or-buy program in the negotiation of the contract. The ACO is responsible for the administration of the make-or-buy provisions of the contract. The ACO will make recommendations as regards proposed changes or revisions to the original make-or-buy schedule, and where delegated by the PCO, negotiate any contract price change resulting therefrom, and/or prepare and execute the required supplemental agreement.

15.7-3 Procedures

a. It will be the responsibility of the ACO with respect to the administration of the make-or-buy program to:

(1) Monitor the make-or-buy schedule to assure compliance therewith by the contractor.

(2) Assure that the contractor establishes a program that will provide for the submission of any proposed changes.

(3) When authorized by the PCO, consent to or deny requested changes in the schedule.

(4) Make recommendations to the PCO with regard to additions to the schedule as regarding items reserved for deferred decision or unidentified at the time of contract negotiation.

(5) Screen the Consolidated List of Debarred, Suspended, and Ineligible Contractors when reviewing proposed changes to the contractor's original make-or-buy schedule. Screening will be accomplished to determine if any of the changes proposed by the contractor involve a supplier appearing on the list. Should a proposed supplier arrear on the list, and authority to consent to or deny requested changes to the make-or-buy schedule has not been delegated, recommendations should be made to the PCO as to whether the requested changes should be denied or whether it would be in the best interest of the Government to approve the changes.

b. The Production, Engineering, or Quality Assurance element will furnish recommendations to the ACO upon request as to the contractor's compliance with the make-or-buy schedule. In arriving at his recommendation as to changes or additions to the schedule, the ACO will obtain information from the Production, Engineering, Quality Assurance, or Pricing element within the Region, DCASMA or DCASPRO.

c. When authorized by the PCO, contract price changes resulting from additions or modifications to the make-or-buy schedule will be negotiated by the ACO, who may also be authorized to prepare and execute the supplemental agreement.

15.805 PRICE/COST ANALYSIS

15.805-1 References

a. FAR 15.8, Price Negotiation.

b. DFARS 15.8, Price Negotiation.

c. FAR 31, Contract Cost Principles and Procedures.

d. Armed Services Pricing Manual (ASPM) (1986)

e. DAR Section III, Part 8, Price Negotiation Policies and Techniques.

f. DAR Section XV, Contract Cost Principles and Procedures.

g. DCAAM 7640.1, Defense Contract Audit Manual, Chapter V.

h. DLAM 8300.1, Production Manual for Contract Administration Services.

i. DLAM 8400.2, Contract Management Engineering Manual for DLA.

15.805-2 Policy

The Financial Services element is the Contract Administration Office focal point for analyzing contractor cost or pricing data and other financial information, and issuing reports to the ACO, TCO, or PCO. This policy statement pertains to price/cost analysis, cost accounting standards (see 30), financial preaward surveys (see 9.1), monitoring contractors' costs (see 42.70), contractors' systems reviews, including purchasing (see 44.3), employee compensation (see 31.205), and insurance/pension reviews (see 28.3), reviews of contractor claims for payment of overtime premiums, special tooling, etc. Financial Services personnel represent and act for the ACO in requesting, receiving, and analyzing reports and surveys from the Defense Contract Audit Agency (DCAA), except in those cases where the ACO elects to deal directly with the contract auditor on a special case basis.

15.805-3 General

a. Definitions

(1) *Pricing Team.* The DCAS pricing team is composed of personnel possessing special skills and knowledge peculiar to governmental and commercial aspects of overall business operations. The ACO heads the team and is supported by various specialists such as price/cost analyst, contract auditor, engineering, industrial specialists, packaging, transportation, and quality assurance specialists. Audit support is furnished by DCAA.

(2) *Field Pricing Support.* Field pricing support is a comprehensive review that encompasses an analytical and judgmental effort of field personnel applied to a contractors' price proposal. The price analyst develops an approach to the conduct of the review and evaluation consistent with the content of the request, the complexity and dollar value of the contractor's proposal, and the regulatory/guidance material contained in the references cited in paragraph 15.805-1. The analyst also initiates requests to those members of the pricing team from whom assistance is needed in accomplishing the review and evaluation. The findings and recommendations of the pricing team are consolidated by the price analyst and presented to the ACO in the form of a field pricing support report. This report must, to the extent possible, contain sufficient data to support negotiation of the Government's pricing objectives as developed by the pricing team.

(3) *Technical Assistance to Pricing.* The term "technical assistance" as used herein refers to the supporting input available to the price/cost analyst from the various functional elements. Reports issued in response to the price analyst's request for assistance in conducting a review and evaluation of a contractor's price proposal will be identified under the subject caption by the words "Technical Analysis of Cost Proposals" (TACP).

(4) *Audit Support.* As a member of the field pricing support team, the DCAA auditor's contribution to the pricing effort is constituted as an advisory report concerning a contractor's financial and accounting policies, practices, and experience incident to the conduct of existing or potential contractual relationships pertinent to Government procurement.

b. Responsibilities

(1) *Applicability and Procedures*

(a) FAR 15.805 sets forth the basic policies regarding price/cost analysis of contractor's proposals. Ordinarily, a comprehensive field pricing review will be requested by the contracting officer for pricing proposals exceeding $500,000 for fixed-price contracts, and $1,000,000 for cost type contracts when the proposed cost or price is based on cost or pricing data. (See 15.805-3b(2)(a) for DCAS thresholds regarding ACO requests for pricing reviews.)

(b) Contracting officers are not required to request field pricing review for proposals in excess of the above stated threshold when information available is considered adequate to determine the reasonableness of the proposed cost or price (see 15.805-12a and b, and FAR 15.805-5).

(c) Contracting officers may request field pricing review for proposals below the above stated threshold as discussed in FAR 15.805-5(b). Contract Administration Offices shall be responsive to all requests for pricing assistance. When a request for field pricing support is made, two copies of the contractor's proposal are to be provided to the ACO by the PCO, identifying any areas where particular pricing effort is desired and establishing the due date of the report. In urgent situations, verbal requests will be honored. The requesting official will be asked to submit written confirmation of the verbal request as well as other pertinent data. Data not readily available will be obtained from the contractor by the Financial Services element. If the contractor has been directed by the PCO to give the ACO copies of the proposal (see DFARS 15.805-5(c)(1)(70)(B)), the ACO or the price analyst should periodically inquire as to the contractor's progress toward meeting the proposal due date and keep the PCO informed of any real potential slippage of the due date.

(d) The subsequent paragraphs and subparagraphs provide procedural guidance concerning the responsibilities of the members of the ACO's pricing team. These procedures apply to all requests for pricing assistance relative to all contractor proposals, including but not limited to new procurements, changes, spare parts, price redeterminations, forward pricing rates, and pricing formulas. In reading and applying this material, however, the ultimate objective must be kept continually in mind, and that is the development and submission on a timely basis of a written report to the ACO or the PCO which will place the contracting officer in the best possible position to negotiate a reasonable price with the contractor. This objective is a difficult one to meet; success can only be achieved if everyone concerned with the performance of these reviews and evaluations places great stress on adequacy of coverage, speed, and avoidance of duplication of effort. Among other things, an attitude of mutual helpfulness (i.e., an approach under which each member of the team does everything that can be done to help the others) is without question one of the best means of accomplishing the desired end result, and is expected of all concerned. FAR 15-805 and FAR 15-803 provide information and guidance relative to the composition and responsibilities of the field pricing support team.

(2) *Administrative Contracting Officer*

(a) The ACO shall request pricing assistance from the Financial Services element on fixed-price proposals over $25,000, cost-type proposals over $100,000 and proposals involving significant special tooling or test equipment (see 15.805-12f and 45.310) unless this requirement is waived and fully documented by the Chief, Contract Management, at the local level. On all other proposals, the ACO should request review and evaluation by the Financial Services element when it is determined that sufficient information is not available to establish the reasonableness of the proposed cost or price.

(b) When pricing assistance is not required, the ACO will perform such pricing action as considered necessary and will document the file indicating what was analyzed and conclusions reached to support the pricing action taken. In the event the ACO's evaluation yields information which may have a bearing on future pricing actions by the pricing team, this information should be provided to the Financial Services element. All other price proposals will be submitted to the Financial Services element for review and evaluation.

(c) The ACO is responsible for the content and accuracy of the pricing report. When the PCO has negotiation responsibility, the ACO will transmit the pricing report with appropriate ACO comments to the PCO and furnish a copy of the submission to the auditor when audit input was involved.

(3) *Price/Cost Analyst*

(a) The price/cost analyst is assigned responsibility for coordinating and accumulating the pricing actions required to be performed, including evaluating and consolidating into a comprehensive report the findings and conclusions of the field pricing team members. Contractor proposals will not be reviewed by the price/cost analyst unless specifically requested by the ACO. Price/cost analysts may request any data from, or review the records of the contractor which may be necessary for the preparation of a comprehensive pricing report.

(b) When it is necessary to request assist reviews of subcontract or intra-company cost proposals (see 15.805-9), the price/cost analyst will prepare the necessary correspondence for ACO signature. The request should be accompanied by a copy of the review package accomplished by the prime contractor or higher-tier subcontractor, including: (i) the subcontract or intra-company proposal; (ii) SF 1411; (iii) other related cost or pricing data submitted with the proposal; and (iv) the results of the prime contractor's or higher tier subcontractor's cost/price analysis, when available.

(c) When audit input is required, the price/cost analyst is responsible for making requests to, and providing liaison with, the cognizant DCAA auditor. The price/cost analyst is also responsible for requesting technical assistance reports which are required to complete the evaluation, and when necessary, initiating follow-up action. Normally, requests for TACPs will be directed by the price/cost analyst to the Production element for initial review and assignment, unless designated differently by local management.

(d) The price/cost analyst should utilize advanced analytical techniques such as random sampling, learning curves, regression analysis, etc., as appropriate in performing evaluations of contractor proposals. Additionally, computerized cost proposal models should be developed where cost-effective to expedite the preparation of reports of pricing reviews for contractors that submit a significant volume of repetitive-type proposals for evaluation.

(e) The Air Force Systems Command's (AFSC's) Acquisition Management Information System (AMIS) Price History Data Base (PRICES) provides on-line access to acquisition and pricing history of over two million line items. The price/cost analyst should use AMIS or any other pricing database maintained by the services, as well as other available cost information which can be useful in evaluating the reasonableness of the contractor's proposal. To assure that price/cost analysts use historical pricing information and cost modeling capabilities of microcomputers, most price/cost analysts in each CAO shall become proficient in using the system and in accessing historical data files. Short and long-range economic forecasts of wage and price indices provided by HQ DLA or obtained from other sources should be appropriately utilized by the price/cost analyst in conjunction with the contractor's own historical data in evaluating the reasonableness of projected inflation factors and resulting wage and price increases.

(4) *Pricing Supervisors*

(a) Firstline supervisors are responsible for assuring that quality pricing products are provided in a timely manner. This includes reviewing completed pricing reports for sufficient coverage of significant elements, as well as monitoring each analyst's case volume, backlog, and timeliness. The supervisor should provide analysts with feedback regarding the strengths and weaknesses in their reports. Actions to correct deficiencies in the quality or timeliness of pricing products should be initiated when warranted. Such actions may include scheduling additional training (mandatory, refresher, or in-house), requesting CO assistance in resolving problems related to recurring inadequate contractor proposal submissions, and working with COs and pricing team members to tailor requests and participation to the requirements of each proposal under review.

(b) Pricing supervisors (or the Chief, Contract Administration Division if a pricing supervisor is not assigned) shall identify a price/cost analyst in each CAO who is responsible for assisting other analysts in programming and using microcomputer applications. The name of the analyst will be provided to the DCASR Chief, Financial Services Division.

(c) The supervisor is responsible for accomplishing an annual survey to identify contractor locations for which the Financial Services element completed at least 50 contract pricing reviews during the prior Government fiscal year (GFY). For each high volume contractor identified, the CAO will summarize the number and dollar value of pricing actions completed for each of the categories of contract pricing cases (see 15.801-5a through c). Results of the annual survey will be provided to the DCASR Chief, Financial Services Division, by 31 December of each year, along with comments on whether or not a computerized cost proposal model (see 15.809-2b) has been developed using microcomputer capabilities. If one has not been developed, comments should include reasons why one has not been developed. Also, a milestone chart for developing a model should be provided. The CAO should also identify situations where computerized techniques were used by price/cost analysts and CMCs during the prior GFY and other applications which could be beneficial in accomplishing pricing, cost monitoring, financial analysis, and other responsibilities assigned to the Financial Services element.

(5) *Chief, Financial Services Division*

(a) To assure that high quality reports are provided to ACOs and PCOs, the Chief of the Financial Services Division should establish a program to randomly sample the quality of pricing cases performed by each CAO. The sample should be drawn from cases with and without audit and technical assistance, regardless of dollar value. The sample size and method for selecting cases for review should be structured to assure that the sample reviewed is a valid representation of the quality of cases prepared by each CAO. The review should be performed on an after-the-fact basis in order to avoid unnecessary time delays during the proposal evaluation. Reports should be critiqued for quality, timeliness and content. Detailed comments should be provided to the appropriate DCASMAs and DCASPROs. The Regional Systems and Engineering Division may be requested to review the technical portion of those proposals where a TACP was performed on the case. The Regional review of pricing cases does not negate the need for continuing field surveillance and assistance reviews.

(b) Financial Services Division Chiefs are ultimately accountable for maintaining quality and timeliness in DCAS pricing reports. They should emphasize to the pricing supervisor and the price analysts that they are responsible for providing quality pricing reports. Upon receipt of the monthly MIR 448 report, the Chief should promptly review the data provided by each CAO and follow-up with appropriate actions as necessary to assure that the timeliness and effectiveness of the pricing mission are maintained.

(c) The DCASR Chief, Financial Services Division, should review the results of the annual computer applications survey (see 15.805-3b(4)(b)) and assure development of computerized cost proposal models and other applications programs at field offices where appropriate. Information on cost models and other Financial Services programs which may be useful to other CAOs will be provided to DLA-AF for dissemination to other DCASRs.

(6) *Auditor.* The contract auditor has responsibility for performing that part of reviews and cost analyses which require general access to contractor's books and financial records supporting proposed cost of pricing data, regardless of the dollar amount involved. However, this does not preclude the price/cost analyst from also requesting any data from, or reviewing the records of the contractor which may be necessary for the preparation of a comprehensive pricing report. It is not intended that such access will be used to duplicate or substitute for evaluations within the purview of the contract auditor.

c. Items for Special Consideration

(1) "Most Favored Customer" and "Commercial Pricing for Spare or Repair Parts" Reviews. The ACO will notify the Financial Services element upon receipt of a BOA, BPA or contract containing a "most favored customer" or "commercial pricing for spare or repair parts" provision. Financial Services will develop and maintain a comprehensive sampling plan to periodically test contractor compliance with these provisions. The plan will be coordinated with the cognizant ACO. The sampling plan should be developed on a contractor-by-contractor basis and should provide for periodic checks of both high and low dollar items to assure statistically valid conclusions regarding contractor compliance with the "most favored customer" or "commercial pricing certificate" provision. Review may be conducted as part of a detailed price/cost analysis, or may be performed as separate reviews if required by the sampling plan. The ACO will be advised prior to initiation of separate verification reviews. In establishing the sampling plan, the following factors should be considered: estimates of the number and total value of contracts and orders subject to "most favored customer" or "commercial pricing certificate" provisions, the number and dollar value of items priced per order, and information concerning the effectiveness of the contractor's procedures and practices as indicated in prior reviews.

(2) Energy Conservation Reviews. Energy conservation by DoD contractors warrants priority attention by DoD contracting and contract administration components. Accordingly, the Financial Services element will maintain close coordination, and will participate, as appropriate, with the auditor and technical specialists during the planning and performance of reviews of energy utilization and energy conservation efforts at contractor locations under cognizance of the CAO. The price/cost analyst is responsible for including information on the status and cost impact of energy reviews in reports of price/cost analysis and other case duties where appropriate.

(3) Duty-free Entry. Certain supplies imported into the United States for use in Defense contracts are exempt from payment of import duty (25.6-2a). When reviewing contractor proposals subject to duty-free entry, the price/cost analyst should verify that the proposed costs do not contain duty on foreign supplies. Improper duty charges will be noted in the pricing report and excluded from the analyst's recommended costs.

15.805-4 Pricing Case Register and Reporting Pricing Activity

a. *DLA Form 1278.* DLA Form 1278, Pricing Case Register, is the basic document for managing the pricing workload. A manually prepared or computerized register is intended to provide a permanent record of workload in chronological order for purposes of controlling and reporting pricing and other case assignments. Accordingly, all entries will be permanently recorded in the Register, which the Financial Services element will maintain on a Government fiscal year basis. (Cases completed by the ACO under the provisions of 15.805-3b.(2)(a) are not to be entered in the Register maintained by Financial Services.) If a computerized register is used, a back-up disk must be maintained by CAOs to protect against accidental loss of data. Separate sheets will be used for each case classification identified in subparagraph 5a through f, i.e., new procurements, orders under existing contracts or BOAs, contract changes, other pricing cases, overhead and cost monitoring reviews, and other cases. Under each of the major classifications, there are various subclassifications which may be used if desired. If used, they should be inserted in the "Case Number" column. Most of the columns are self-explanatory; however, a few additional comments are considered necessary as follows:

(1) *Date Received in DCAS.* Record the date the DCASMA/DCASPRO has received both the contractor's proposal and the request for review (or date the DLA Form 1542, Price/Cost Analysis or Review Request is sent, for ACO initiated reviews). When a verbal or written request is received in advance of the contractor's proposal, the proposal receipt date should be entered. If an advance copy of the contractor's proposal is received by DCAS prior to the request for review, the request receipt date should be entered.

(2) *Due Date Columns.* If the due dates are revised, do not eliminate the date being revised; instead line through it and enter the new date. If a computerized Register is used, include a column for due date revision and enter the new date.

(3) *Date Completed.* Record the date the final written report is transmitted to the ACO.

(4) *Date ACO Letter to PCO.* At the time the case is established determine whether the case is to be handled (usually negotiated) by the ACO or the PCO. If the case is to be handled by the ACO, "X" out this block. This block is to be completed for cases identified in subparagraph 5a through f.

(5) *Dollar Value.* Normally, the entry in the dollar value column is the total dollars for the proposed procurement. In these cases where only a segment or segments of the proposed effort are evaluated, this figure should be for dollars evaluated. There may be certain situations where the dollar value is undeterminable. In these cases a zero value will be entered on the DLA Form 1278. Examples are: time and material contracts where no estimate of the total effort is available and labor hour evaluations. In cases where debits and credits are evaluated, the combined absolute value of the total dollars reviewed should be indicated. For example, a $50,000 debit and $20,000 credit in a change order will be included as $70,000, not the net $30,000. The dollar value for other cases should be recorded in the case register at the amounts reviewed.

(6) *Cost Reduction Recommended.* Record the total field pricing team recommended reduction at the cost level, exclusive of applicable fee or profit.

(7) *Case Number.* To achieve uniformity and consistency in the identification and control of pricing and other cases/reports, a uniform case numbering system in the following format shall be established by each DCASMA and DCASPRO:

Pricing Report No. 001-1-F01-12-S
*DCASMA ATLANTA
GFY 1981
**Other Case
**Progress Payment (Optional)
***Other Case No. 12 GFY 1981
****Spare Parts Case
Identifier (As Applicable)

*CAO Identifier. CAO code as identified in DoD 4105.59-H, DoD Directory of Contract Administration Services Components, Section I.

**Case Type Identifier. The alpha case classification code identified in subparagraph 5a through f. The numeric subclassification code may be incorporated as part of the case type identifier.

***Case Number. A separate set of sequential serial numbers will be used for each case type, i.e., cases classified as codes "A" through "F" in paragraph 15.805-5 below.

****Spare Parts Case Identifier. An "S" will be added after the sequential serial number when the proposal under review is a spare parts proposal. *When a proposal involves both spare parts and end items, two cases will be established:* one case for the end items and one case for the spare parts.

To facilitate maintenance of the Pricing Case Register, the CAO, fiscal year and case type identifiers should be recorded in the "Code" block in the upper right corner of DLA Form 1278. The sequential serial number and optional subclassification code and spare parts case identifier are to be recorded in the "Case Number" column.

(8) *Notes.* The back side of the form has been left blank and should be used for any narrative notes keyed to the specific cases.

b. *DLA Form 1544.* The DLA Form 1544, Price Analyst Assignment and Activity Log, provides additional visibility for managing the pricing workload. Cases are entered in the Activity Log when assigned. Cases not completed during the reporting period are carried forward to the next month's Activity Log. Use of DLA Form 1544 is optional at the discretion of the supervisory price analyst or branch chief if the Pricing Case Register is sufficient to maintain visibility of individual analyst workload.

c. *Reporting Pricing Activity.* Management information data will be reported monthly in accordance with the requirements of the DLA Management Information System RCS: DLA (M)448(C)MIN. The Pricing Case Register (DLA Form 1278) is the source document for developing and reporting pricing activity as required by this system will be prepared internally and retained by the Financial Services element for use in management control. Data will be reported to the 448 system with a DLA Form 657, Management Information Report. Regional staffs should selectively check the data reflected on the DLA Form 657 to the source documents during staff visits in order to periodically validate the accuracy of the data included in the Management Information System.

15.805-5 Criteria for Establishing and Classifying Price and Other Cases. The DLA Form 1278, Pricing Case Register, is the basis for the MIR reporting of pricing workload. To achieve the greatest degree of uniformity of reporting pricing workload, uniform identification and classification of cases by all DCAS offices are essential. The following criteria are to be used to identify, establish, and classify pricing and other cases in the case register.

a. *New Procurements*

(1) Price proposals in response to an RFQ or RFP.

(2) Price proposals for definitizing letter contracts.

(3) Subcontract proposals in response to requests originating outside the DCAS office (from the prime ACO or PCO) for the purpose of establishing the prime contract price.

Note: Assist reviews of proposed subcontracts or intracompany work to the accomplished (by the same or by another activity) in support of a review of the prime (or higher tier subcontractor) are to be treated as part of the overall price review by the requesting office, even when it performs the analysis of the proposed subcontract or intracompany work. These are not to be established as separate cases.

(4) Proposals for facilities' contracts including modification proposals for additional facilities.

(5) Proposals for leases and rental agreements with total dollar values.

(6) Intracompany work proposals in response to requests originating outside the DCAS office (from the prime ACO or PCO) for the purpose of establishing the prime contract price. (See "NOTE" under case code subparagraph (3) above.)

(7) Proposals for special tooling or special test equipment.

(8) Unsolicited proposals.

b. *Orders Under Existing Contracts, or Basic Ordering Agreements (BOAs)*

(1) Proposals for spares, support equipment, manuals and data submitted under prime contract provisioning procedures.

(2) Proposals for orders issued under BOAs.

(3) Work requests or work authorizations under repair maintenance, or overhaul contracts.

c. *Contract Changes.* Contract change proposals including change orders, contract modifications, approved VECPs and economic price adjustments.

d. *Other Pricing Cases*

(1) Price proposals for proposed engineering changes or VECPs.

(2) Termination settlement proposals.

(3) Final price redetermination proposals.

(4) Proposals for finalization of price on incentive contracts.

(5) Royalty payments.

(6) Liquidated damage claims.

(7) ADPE acquisition proposals.

(8) Contractor claims for cost or price adjustments (e.g., overruns, FAR 50.0 type claim).

(9) CAS price adjustment proposals.

(10) Pricing proposals not specified above.

e. *Overhead and Cost Monitoring Reviews*

(1) Cost monitoring reviews.

(2) Forward pricing rate/formula and billing rate proposals.

(3) IR&D/B&P advance agreements.

(4) Tracking of forward pricing rate and formula agreements (set up case for each agreement involved).

(5) Final overhead settlement proposals.

f. *Other Cases*

(1) Progress payment reviews.

(2) Subcontract proposals submitted for consent approval.

(3) Contract fund status reviews.

(4) Review of contractor overtime expenditures.

(5) Defective pricing reviews.

(6) Contract closing statements.

(7) Notice of Intent to Disallow or Not Recognize Cost reviews.

(8) DCAA Form 1 reviews.

(9) Wage and salary reviews.

(10) Proposals for leases and rental agreements without total dollar values (e.g., auto rental rates).

(11) Feasibility studies.

(12) Review of facilities rental payments.

(13) Supplemental reports issued on cases in subparagraphs a through d above; and telephone inquiries for rates and factors, where written report is required.

(14) Requests for audit input only.

g. *Support Cases*

(1) Attendance at prenegotiation or negotiation meetings (record as a case only if more than 2 hours involved regardless of quantity of proposals negotiated).

(2) Participation in accounting system reviews.

(3) Participation in estimating systems reviews.

(4) Participation in purchasing systems reviews.

(5) Insurance/Pension Program reviews.

(6) Reviews required in connection with CAS that do not represent contract price adjustments.

(7) Supplemental reports issued on cases in subparagraph e.

(8) Participation in should cost reviews.

15.805-6 Recording and Scheduling Cases

a. *Policy.* It is DLA policy to complete pricing reviews timely. In the absence of specified due dates, it is general policy to schedule cases for completion in 30 days if audit is not required, or 45 days if audit input is necessary. This notwithstanding, at times it may be necessary for pricing supervisors, in coordination with the cognizant ACOs, to adjust the scheduled due dates for less urgent pricing cases in order to finalize cases having a more immediate impact on DoD procurement. (See subparagraphs c., d., and e. below)

b. *Assignment.* Requests for pricing assistance, accompanied by appropriate contractor documentation (e.g. price proposal for new procurement or change order) will be forwarded expeditiously by the ACO to Financial Services on DLA Form 1542, Price/Cost Analysis or Review Request. Each request for pricing assistance will immediately be recorded in the Pricing Case Register, given a case number, and assigned to a price analyst. Cases performed by a pricing or other trainee will be assigned to the supervisor of a price/cost analyst having overall responsibility for the case. Requests for pricing assistance will be assigned to the price/cost analyst using DLA Form 1542. Requests for pricing assistance in connection with preaward financial analysis or accounting system reviews do not require use of the DLA Form 1542.

c. *Scheduling.* Contract pricing reviews are conducted to assist contracting officers in negotiating fair and reasonable contract prices. Since these negotiations are subject to time constraints for contract award or order definitization, it is DLA policy to schedule and complete all requests for pricing reviews so as not to delay the procurement. Contract pricing cases listed in subparagraphs 5a through c will generally be scheduled for completion within 30 days when an audit review is not required, or 45 days when an audit review is required. (However, see paragraph a. above for DLA policy regarding management's prerogative to schedule cases for completion beyond the 30/45 day milestones.) Cases cited in subparagraphs 5d through g are not subject to the 30/45 day scheduling and MIR 448 reporting standards, but they should be completed timely.

d. *Due Dates.* When a request for review and evaluation includes a specific due date for the pricing report, this date will be honored in scheduling the case. When the requested due date exceeds the normal 30/45 day milestones, it is accepted practice for the pricing element to honor the longer due date. If the request does not specify a due date, the Financial Services element will generally strive to complete the case in accordance with the 30/45 day milestones (but see a. above for policy on scheduling cases for completion beyond the 30/45 day milestones.) For a PCO initiated request, aging of the case begins when both the contractor's proposal and the PCO request for review are received by the ACO and ends when the report is mailed by the ACO. For an ACO-initiated request, aging of the case begins when the ACO forwards DLA Form 1542 and ends on the date the report is submitted to the ACO. However, for reporting pricing actions under MIR 448 requirements, aging begins when the DLA Form 1542 is received by the Financial Services element and ends when the completed pricing report is forwarded to the ACO.

e. *Extended Due Dates.* Scheduled completion dates will not be extended without prior coordination with the requestor. If DCAS or DCAA current schedules preclude completion of a report in time to meet the requested or targeted date, the price/cost analyst will coordinate with other members of the pricing team and develop a realistic date which allows sufficient time for the review. This date, and the impact on the final report if an extension is not granted, will be coordinated with the requestor. If an extension cannot be granted, the analyst and pricing supervisor will consider the possibility of rescheduling cases with less critical due dates. This will permit more intensive effort to immediately be focused on the case with the most critical due date. In examining criticality, the following factors should be considered: (i) who is the recipient of the case (PCO requests may be given precedence over ACO negotiated cases if agreed to by the ACO involved), (ii) the contract type (for proposal of similar dollar magnitude, fixed price proposals should be given precedence over cost type proposals), and (iii) the urgency of the supplies or services being priced. If rescheduling is not feasible, the report, qualified if needed, will be provided to the contracting officer within the requested time frame. In the interest of conserving time, the above coordination and communication should be accomplished orally, documented in the work file and confirmed in writing. An established understanding with the ACO or PCO may preclude the need for written confirmation. When written confirmation is required, DLA Form 65-R, Notification Form, may be used.

f. *Adequacy.* If the preanalysis review of the contractor's proposal reveals that the contractor's documentation is so inadequate that review and evaluation cannot begin, the case will be cancelled after coordination with the requestor and eliminated from the manually prepared register by redlining. If a computerized register is used, the case will be eliminated by annotating the remarks column "CANCELLED" in bold letters. It will be reentered as a new case when an adequate proposal is received. Such redlining is a mere reversal of workload input, and therefore will not be counted as a "completed" case. If the proposal documentation is only partially inadequate and does not preclude commencing the review and evaluation while the contractor corrects the deficiencies, the case will remain in the register as an active case and aging of the case commences. Once the review commences, a case would be cancelled only if the review and report are no longer needed.

15.805-7 Files

a. For each case identified in subparagraph 5a through e, the price/cost analyst will prepare a case file with sufficient documentation to constitute a full history and provide a clear record of what cost or pricing data was submitted by the contractor in accordance with FAR 15.804, and the scope of examination by the field pricing team. Establishment of such a case file with sufficient documentation is necessary for:

(1) Providing a complete background to assure that informed positions were taken in the evaluation of contractor's proposals.

(2) Showing a data trail which indicates the source of information utilized to support facts and conclusions expressed in the price/cost analysis report.

(3) Providing information for review and investigations conducted by the Military Departments concerned, the Department of Defense, the GAO or others.

(4) Furnishing essential facts in the event of litigation or congressional inquiries.

(5) Determining contractor compliance with public law and DoD requirements.

b. "Other" and "Support" reviews (i.e., cases identified in subparagraphs 5f and g), the price/cost analyst will prepare an appropriate file to establish and provide a clear record of the request as well as actions taken and the scope of any examinations by the Financial Services element or other members of the pricing team.

c. Each Pricing case file will be adequately indexed to permit ready identification and access to information within the files. DLA Form 1541, Price/Cost Analysis Case File Index, will be used for this purpose. The composition and number of work papers required in each case file depends on the complexity of the analysis. However, it is mandatory that the case file for each review contain complete documentation and work papers sufficient to support the analyst's recommendations and conclusions. For other cases, the analyst will include an index suitable to identify and categorize the specific work papers included in the file.

15.805-8 Requests for Financial Services Assistance

a. *PCO Initiated Requests*

(1) When a field pricing report is requested by a PCO, the mailing envelope containing the inquiry should normally be marked "FIELD PRICING REQUEST" in bold letters. On urgent requests the PCO may provide facsimile numbers in the request to facilitate sending reports by facsimile transmission. If a facsimile number is not provided by the PCO on urgent requests, the ACO or price/cost analyst should contact the PCO by telephone to inquire whether or not a facsimile number is available to facilitate sending the pricing report. Immediately upon receipt of a PCO request for pricing assistance, the mail room is to forward the request directly to the Financial Services element. When a PCO request is accompanied by a contractor's proposal, Financial Services will assign the request to a price/cost analyst by completing the upper portion of DLA Form 1542, Price/Cost Analyst or Review Request; an informational copy of the form will be sent to the ACO as an acknowledgement of receipt of the PCO request for assistance. PCO requests not accompanied by a contractor proposal will be forwarded by Financial Services directly to the ACO without completing a DLA Form 1542. The ACO will complete the upper portion of the DLA Form 1542 when the contractor's proposal is received, retain one copy of the form for suspense purposes and immediately forward the original and two copies of the form along with the PCO request and contractor's proposal to the Financial Services element. When FAR 53.303-DD-254, Department of Defense Contract Security Classification Specification, and Attachments are received from the PCO (see 4.4-5), the ACO will annotate the DLA Form 1542 with the contract or solicitation security requirements utilizing the section provided on the form for those areas requiring special attention. After a price/cost analyst is assigned to the case, a copy of the form will be returned to the ACO as an acknowledgement of receipt of the request for assistance. A completed copy of the form will be used to forward the report to the ACO and the original will be placed in the case file. The request should include two copies of the proposal, all related data, special areas for emphasis as desired by either the ACO or the PCO, and the due date. Of prime

importance is action to get the proposal in the review cycle as soon as possible. Even if the package is not considered adequate to commence the review; the ACO will submit it to the Financial Services element for preanalysis and recommendations prior to acknowledging receipt of the request to the PCO. The ACO, or the price/cost analyst when requested by the ACO, will acknowledge receipt of the request to the PCO and advise of the date the completed report will be mailed and of any anticipated problems. DLA Form 65-R, Notification Form, may be used to acknowledge the PCO's request. In situations where an established understanding exists with the PCO regarding processing time, the PCO may agree to dispense with routine acknowledgements.

(2) When verbal findings and recommendations are requested by the PCO in advance of the written field pricing report, the price/cost analyst will coordinate with the ACO prior to providing the verbal results of review to the PCO. The coordination with the ACO and the information provided to the PCO will be annotated in the case file. The field pricing report to the PCO will contain a comment to the effect that advanced verbal results of review and evaluation were provided as requested.

(3) A PCO may occasionally request an audit only review, notwithstanding that a field pricing support report includes an audit review where appropriate. Upon receipt of such requests or any others that limit the review or do not provide clear instructions as to how the review effort should be accomplished, the following actions shall be taken:

(a) The ACO (or price/cost analyst when requested by the ACO) should informally and cooperatively contract the PCO (or prime ACO) by telephone promptly to clarify the type or extent of field pricing support desired.

(b) If, as the result of such contact, the PCO desires that the field pricing support effort be limited to input from the contract auditor only, the review effort requested from the Financial Services element by the ACO will be so limited. Although DFARS 15.805-5(c)(1)(70)(A) provides that copies PCO's requests for field pricing support will be furnished to the auditor, the request for audit should be confirmed with the auditor to affirm the PCO's due date and to advise the auditor that a pricing team review effort is not desired by the PCO. The ACO and price analyst will only make a limited evaluation of the audit report. The ACO's field pricing report to the PCO will contain a comment to the effect that the evaluation was limited in accordance with the PCO's request for an audit only. However, in the event there is additional data readily available to the price/cost analyst that could have a significant bearing on the proposal, the ACO's field pricing report to the PCO will include such additional data.

b. *ACO Initiated Requests.* When the ACO has negotiation responsibility, required pricing assistance will be requested from the Financial Services element by using the DLA Form 1542. The "special attention" section of DLA Form 1542 will be utilized to indicate special security requirements associated with the review (see subparagraph 15.805-8a(1)). In addition, the ACO may request the price/cost analyst to develop the pricing objective prior to negotiation and to assist the ACO in negotiating the final contract price.

c. *Special Requirements*

(1) *Most Favored Customer Reviews.* Occasionally, pricing reviews may be requested on BOAs, BPAs, contracts, or solicitations containing a "most favored customer" or "commercial pricing for spare or repair parts." provision.

(a) The contractor agrees in accordance with the "most favored customer provisions." provisions that the prices charged the Government shall be as low as, or lower than, those it charges its most favored customer for comparable quantities under similar terms and conditions.

(b) The contractor certifies in accordance with the "commercial pricing for spare or repair parts" provisions that the prices proposed to the Government are the lowest commercial prices at which the items were sold to the general public during the most recent regular monthly, quarterly, or other period for which sales data are reasonably available. The ACO will annotate on DLA Form 1542 whenever the request for pricing review of a contractor proposal or claim for exemption from submission of cost or pricing data involves a price which is subject to a "most favored customer" provision. For requests involving "commercial pricing for spare or repair parts," the ACO shall clearly identify in the DLA Form 1542 those items in the solicitation or contract that are spare or repair parts. The reviews will be performed by the price/cost analyst in accordance with the analyst's sampling plan (see subparagraph 15.805-3c(1)) and any requirements included in the ACO's request.

(2) *Reimbursable Reviews.* The ACO is to annotate the document control number on the DLA Form 1542 at the time a pricing or other case that involves a reimbursable review is initiated. In addition, the instruction on the DLA Form 1542 requires the ACO to forward the following information as attachment(s) to the form:

(a) For reviews requested through the DoD Central Control Point by foreign governments and NATO offices, attach a copy of DLA Form 929, Request for Contract Administration Services, and associated documentation which indicates that the requestor has agreed to reimburse the U.S. Government for services performed.

(b) For preaward pricing reviews involving both DoD and FMS requirements, attach information which includes the foreign government's intention to reimburse the U.S. Government for the requested services, including a billing address.

(c) For requests covering FMS items not processed through the DoD Central Control Point, provide documentation that the military department sponsoring the FMS will pay for the services, including a billing address.

(d) For requests for pricing services from civilian agencies, attach a copy of the agency's request for analysis.

NOTE: If the necessary documentation is not furnished by the original requestor, the analyst is responsible for obtaining the information from the DoD Central Control Point, the military source sponsoring the FMS case, or the civilian agency, as applicable.

(3) *Spare Parts Pricing Reviews.* When reviewing spare parts price proposals, the ACO or price analyst must as a minimum, perform:

(a) A detailed analysis of each spare parts line item where the quoted price exceeds by 25 percent or more the lowest price to the Government of the item at any time within the most recent 12-month period. The requesting activity will generally specify these items in the request for field pricing support.

(b) A visual review of all items to assure that the price for each item is commensurate with the item's perceived value. Perform a detailed analysis of the item if the price proposed appears to be excessive.

(c) A detailed analysis of high-dollar-value items which should equal 70 percent of the proposal price. If there are no obvious high-dollar-value items, i.e., the majority of the line items are of approximate equal value, perform a random sampling of the stratified items.

(d) Perform a detailed analysis of a random sample of the remaining low-dollar-value line items. The sample size may be subjective depending on experience with the contractor, reliability of the contractor's estimating/accounting systems, credibility of proposals, etc.

(4) *Bills of Material Reviews.* When a contractor submits bills of material to support a pricing proposal, follow the same procedures in (3) above.

15.805-9 Review and Evaluation of Forecasted Labor Rates for Pricing Government Contracts.

a. It is DLA's policy to use FAR Part 31.205-6, Compensation for personal services, to determine the reasonableness for services rendered by employees to the contractor during the period of contract performance. When evaluating contractor proposed forecasted labor rates, including increases to executive compensation, salaries, wages, and employee benefits, price/cost analysts will use the lower of either the Data Resources, Inc. (DRI) Forecast for Average Hourly Earnings of Production Workers Private—Nonfarm or the uniform rates of change recommended by the Joint Logistics Commanders (JLCs), and/or Service as appropriate.

b. HQ DLA-AF issues letters containing the latest quarterly updates of the DRI rates and the most current JLC rates to the Regions to be used by the price/cost analyst at our field activities when examining contractor proposals. These quarterly updates contain the current DRI rates for six catagories, namely:

(1) Implicit Price Deflator—Gross National Product

(2) Consumer Price Index (All Urban)

(3) Consumer Price Index (Wage Earners)

(4) Producer Price Index (Industrial Commodities)

(5) Index of average Hourly Earnings of Production Workers—Private Nonfarm

(6) Electronic Components and Accessories (WPI 1178 NS)

c. In all cases, the Administrative Contracting Officer (ACO) should be mindful of the rates being negotiated by the Procuring Contracting Officer where the contractor negotiates with the various Services.

d. Once the DRI or JLC rates of change are selected for use in evaluating a specific proposal (including forward pricing rate proposals), the selected index will be used to evaluate the current and out years.

e. The DRI forecasts and JLC uniform rates are management tools to be used as guidelines in establishing reasonable contract prices. They are not intended for use as a minimum or a ceiling on compensation, but rather as benchmarks above which labor rate increases must be fully justified and documented by the contractor. Rates of increase lower than those projected by DRI or the JLCs may be appropriately based on local economic conditions.

f. During the contract management board of review process, all rates which exceed the guidelines used should be adequately justified and documented so that upper management can be assured that negotiated labor rates are reasonable.

15.805-10 Review and Evaluation of Subcontract Proposals

a. It is basic DoD policy (FAR 15.806) that prime contractors and higher tier subcontractors are responsible to obtain and analyze their subcontractors' costs and pricing data and to submit the results of their analyses to the Government as part of their own cost or pricing data supporting their proposals. It is essential that contract administration personnel assure contractors are aware of their responsibilities and provide analyses of subcontractor data as part of their own cost proposals. ACOs and Price Analysts should periodically remind contractors that decrement factors which represent the historical difference between subcontractors' proposed prices and the actual prices negotiated with the subcontractors constitute cost or pricing data. Therefore, this information should be provided by the contractor with all other cost or pricing data. (See also DFARS 15.806.)

b. There are three conditions to this basic DoD policy under which reviews will be conducted:

(1) If the prime contractor or upper tier subcontractor cannot perform the additional review requested by the CO the Government will assist in performing the additional review required upon determination by the contracting officer that the prime is justified in not performing it because: the prime and subcontractor are competitors; or proprietary data are involved.

(2) A contractor may also request the cognizant ACO to perform a limited or complete subcontract proposal review. The ACO should make arrangements for such assistance only when, in his opinion, it would be in the best interests of the Government, such as where: there is a business relationship between the prime and subcontractor not conducive to independence and objectivity; or the contractor is a sole source and the proposed subcontractor represents a substantial part of the prime contract costs.

(3) There is another situation where the Government may get involved in subcontract proposal

best copy available

review. This occurs when the PCO/ACO requests validation of the contractor's analysis of the subcontract proposal.

c. Upon receipt of a request to evaluate a subcontract package, the ACO should determine whether the request conforms to one of the conditions identified in subparagraph b above. If the request meets any of these criteria, the subcontract pricing review should be accomplished as a regular pricing case within the time limits established in the request.

d. If the ACO determines that the request does not meet the conditions discussed in subparagraph b above, he should immediately contact the requesting activity by telephone and advise the requestor of the above-cited DAR policy and of the ACO's concern that the request does not appear to meet the above-cited conditions. In such contacts the ACO's position should unquestionably be one of complete willingness to perform the service, but that the conditions under which the request is being made need clarification/verification.

e. If the requesting activity can properly support the requests, the review will be made. In the event the requesting activity cannot support the request to the satisfaction of the ACO, he will nonetheless comply with the request to make the review, but should document the file to indicate that the requesting activity has been advised of his concern over the apparent inconsistency between the request for the DCAS office to perform the subcontract pricing review and the DAR policy. The pricing report should include a comment similar to the following: "As discussed during our telephone conversation of, the request for this subcontract review could not be identified with any of the exceptions in FAR 15.805-5(i). However, based on your oral confirmation of the need for Government review, we have performed the review requested."

f. In performing the review, an independent cost estimate (an "in-house" Government estimate of what the item should cost, without benefit of the contractor's cost and pricing data) of the subcontractor's proposal will not be developed, but a "review and evaluation" will be performed of the subcontractor's cost and pricing data and of the results of the prime contractor's review of such data. Hence, the request should also contain or identify the subcontractor's SF 1411, Contract Pricing Proposal, and related cost and pricing data, as well as the results of the prime contractor's evaluation thereof. In the event any of these data are not included with or identified in the request, the ACO should request the additional data required, preferably during his telephone discussion concerning support for the request. If the required data are not furnished by the requestor but are available from the subcontractor, the review will nonetheless be accomplished within the time established, and the final pricing report will identify the data made available by the subcontractor and used in the evaluation.

g. When the Government performs the subcontract proposal evaluation, it will furnish the prime contractor or higher-tier subcontractor with a summary of the analysis performed, together with complete information on any unacceptable costs included by element in the subcontract proposal. This will be done only with consent of the subcontractor reviewed. If consent is denied, a range of unacceptable costs for each element will be furnished.

h. If persistent, improperly supported requests to perform subcontract pricing reviews continue to be received from the same buying activity, specific examples and supporting documents should be furnished to HQ DLA, ATTN: DLA-AF, who will discuss such requests with the Headquarters level of the Department(s) involved.

15.805-11 Preanalyses of Contractor Proposals

a. *General.* The price/cost analyst will review the contractor's proposal and related data to determine its adequacy and need for technical reviews, and establish the overall pricing approach that will be used in performing the review and evaluation. In establishing the pricing approach, consideration should be given to recommendations and comments contained in any current systems review performed by the Financial Services element. Where audit reviews have not been specifically requested, the price/cost analyst will determine need or requirement for audit. The price/cost analyst may request an audit review of the proposal as a whole or of specific elements or factors, as determined appropriate. In establishing the review and evaluation program, the price/cost analyst will coordinate with the contract auditor and technical specialists in a manner which will minimize duplication of analysis efforts. In significant actions (usually those over $100,000), this coordination should take the form of a preanalysis meeting. In the preanalysis meeting, the price/cost analyst and the auditor should jointly determine the adequacy of the proposal for evaluation. The results of all preanalysis meetings should be properly documented and appropriate comments included in the pricing file. The exchange of information between DCAS and DCAA personnel throughout the review process is encouraged. Unless otherwise directed by the contracting officer, the price/cost analyst will determine whether price analysis alone (generally limited to proposals under $100,000) or whether cost and price analysis will be required.

b. *Adequacy of Proposals.* Upon receipt of a contractor's price proposal, the price/cost analyst will review the proposal to determine the adequacy of the cost and pricing data for review and evaluation purposes. FAR 15.804-2 sets out the circumstances wherein cost and pricing data are required. Determinations concerning the adequacy of such data evolve from individual judgments and thus are too frequently characterized by inconsistency. ASPM represents the most current guidance available for improving the consistency of treatment afforded to contractor cost and pricing data with respect to determining the adequacy thereof. It is recommended to all members of the pricing team as an aid to understanding in discharging their responsibilities relative to the review and evaluation of contractor proposals. The procedures for processing an adequate proposal are well established. The following procedures apply to processing an inadequate proposal.

(1) It should be a rare exception to receive a proposal so totally inadequate as to make it impracticable to begin review and evaluation efforts upon receipt. This submission of a SF 1411 with the front side complete but no data in response to the instructions on the reverse side of the form is an example of a totally inadequate proposal. The price/cost analyst will promptly notify the ACO concerning the extent of inadequacy. The ACO will immediately advise the contractor of all deficiencies and request advice as to the date upon which the additional data will be furnished. To the extent considered practicable, review and evaluation effort will be initiated relative to data contained in the proposal as received and continued as the additional data becomes available.

(2) When the PCO has retained negotiation responsibility, he will be advised that the proposal is considered inadequate and that the contractor has been notified. The PCO will also be advised of the target date for submission of the additional data and whether any difficulty is expected to be encountered in meeting the report due date. If any delay is anticipated, a revised report date will be established in coordination with the PCO.

(3) In the event the PCO does not concur that the proposal is inadequate, or directs that the review of only that data submitted with the proposal be accomplished, notwithstanding its inadequacy, the pricing team will comply with the PCO's instructions. However, the field pricing report will identify the areas in the proposal where additional data are considered necessary, and the action taken to obtain the data.

(4) If the contractor refuses to submit the required data, action should be taken in accordance with paragraph 15.805-11 below.

(5) Occasionally, contractors furnish data to pricing team members that should have been submitted in writing as part of a proposal. Efforts should be made to have the contractor formally submit such data since it is the contractor's responsibility to submit current, accurate and complete data in writing to the CO or his representative. However, any cost or pricing data provided or made available by the contractor and used by a team member in his analysis should be identified in the team member's report. Every effort should be made to assure that data submitted, or specifically identified, in writing by the contractor can be clearly distinguished in the Government's file from the data obtained by Government personnel and merely made available by the contractor during onsite pricing reviews and audits. Accordingly, the comprehensive pricing report should separately identify contractor submitted or specifically identified data (i.e., data covered by the contractor's certificate as accurate, complete and current) from data obtained by Government personnel from contractor retained records during review and audit.

15.805-12 Contractor's Refusal to Provide Cost or Pricing Data

a. In the event the contractor refuses to furnish the data requested, the ACO will assure that the following actions are or have been taken:

(1) Determine that the kind of data being requested is required to perform the review and evaluation.

(2) Assure that the Government has the authority to require the contractor to furnish the data.

(3) Attempt to resolve the problem by advising the contractor of his obligation to furnish the data. If necessary, request assistance through command channels from the Commander of the DCASR or the CAO.

(4) If the contractor continues to refuse to furnish the data, request a written statement as to the basis for such refusal.

b. In those cases where the PCO has retained final responsibility for negotiating the contract or modification price, the ACO will take the following actions in addition to those detailed above:

(1) Immediately advise the PCO of actions taken and request his assistance in obtaining the data determined to be necessary.

(2) If the PCO is unsuccessful, assure that the review and evaluation report being furnished to the PCO identifies the data not furnished by the contractor and the reason why the lack of such data is considered to be a deficiency.

c. In those cases where the ACO is responsible for negotiations of the contract or modification price, the following actions will be taken in addition to those detailed in subparagraph a above:

(1) If not previously accomplished, request assistance from the Commander of the CAO.

(2) If not previously accomplished, advise the DCASR Commander, through command channels, of the problem and recommend his personal assistance in its resolution.

(3) If all DCASR efforts fail, advise the PCO of actions that have been taken and request assistance in obtaining the necessary data.

(4) If the PCO cannot resolve the matter, request whether another source can provide the supplies or services required. If the PCO rejects this course of action and the data are still required, a request for waiver will be initiated by the ACO in accordance with FAR 15.804-2(a). The request will include detailed information with respect to all actions taken and will be forwarded through channels to HQ DLA, ATTN: DLA-AF. A draft of the proposed D&F, pursuant to FAR 15.804-3, will be provided with the request.

(5) If the waiver is granted, sufficient copies of the D&F will be furnished to the requesting office for incorporation into the contract file. If the waiver is not granted, alternate instructions with respect to action to be taken will be provided.

d. The above actions should normally be taken in the sequence indicated. However, where prior experience indicates that a contractor may refuse to provide necessary cost or pricing data, and it can reasonably be expected that this will cause undue delays in performing a review and evaluation of the contractor's proposal, the ACO should coordinate at the earliest practical date with the PCO in attempting resolution of the problem.

15.805-13 Pricing Assistance

a. *Need for Audit Assistance.* Audit review will usually be requested for proposals in excess of the thresholds cited in 15.805-3b(1)(a) when the proposed price is based on cost or pricing data (see FAR 15.804-2). On all proposals referred to the Financial Services element, the price/cost analyst will consider whether audit assistance is required. This should be based on the requirements of each individual pricing action, including consideration of information of the type described in FAR 15.805-5. Audit will not be requested if a satisfactory review can be performed by the price/cost analyst, except that proposals for price adjustments submitted pursuant to the CAS clause shall require audit regardless of dollar amount (see FAR 30.0). Audit review will not be requested on proposals under the thresholds cited in 15.805-3b(1)(a) unless unusual circumstances indicate that an audit is essential. Proposals in excess of the thresholds cited in 15.805-3b(1)(a) wherein the price/cost analyst considers the use of audit as unnecessary will be referred to the ACO, and files will be documented to reflect the reasons for not requesting an audit.

b. *Need for Technical Assistance.* Technical assistance may be required to effectively evaluate a contractor's proposal. The price/cost analyst will determine whether technical assistance is required. Normally Industrial Specialists or Engineers should not be involved in analysis of proposals under $250,000 or in any case where the value of the elements subject to technical scrutiny have a value of less than $100,000, except for spare parts pricing proposals for which a prior TACP has not been performed. Furthermore, requests for technical reviews on proposals that do not meet the DAR dollar thresholds for field pricing support (see 15.805-3b(1)(a)) should be kept to a minimum, and when requested, they must be fully justified. A request for a TACP should not be made if:

(1) There is sufficient pertinent historical data available.

(2) Relevant prior TACPs exist.

(3) The total dollars of those elements of a cost proposal subject to technical analysis are not significant to the total value of the proposal. In any event, the total dollars of the elements subject to technical analysis should not be less than $100,000.

(4) The lack of a TACP would not present a significant risk to the Government. More specific categories of proposals which embody the same, or all of the elements listed above, are: (i) levels of effort agreed upon, (ii) purchased or subcontracted items, spare parts where cost history is available, (iii) production follow-on products or services where pertinent historical data are available, (iv) approved standards, support labor factors, and realization factors are all involved, or (v) information is to be used primarily for budgetary purposes. A TACP should be accomplished only when the ACO or price analyst determines that the analysis of the contractor's proposal cannot be completed without the assistance of an Industrial Specialist or Engineer, or an incomplete analysis represents an unacceptable risk to the Government. In those cases where the price analyst performs the technical portion of the pricing review, the analyst shall document the pricing case file with a description of the quantitative and qualitative aspects of the proposal reviewed and the conclusions reached as a result of such reviews.

c. *Need for Assist Review of Subcontract or Intracompany Costs.* The review and evaluation of a prime contractor's price proposal may also require the review and evaluation of related subcontract or intracompany proposals. When an assist review is required, the price/cost analyst should immediately discuss the matter with the local ACO and then contact the negotiating CO (if other than the ACO) to discuss the magnitude of the analysis and the amount of time available for the review. After establishing an acceptable time frame for completing the full review, the price/cost analyst should contact the assisting CAO to arrange for commencement of the review and ask that a due date be scheduled in accordance with the policy in 15.805-6. In the case of severely compressed time frames, the analyst should arrange with supporting pricing offices for receipt of advance verbal, work paper, and/or draft report inputs, thus permitting incorporation of review findings in the final package without delay. Written confirmation of the request (see 15.805-3b(3)) should follow the verbal coordination. If the prime review involves reimbursable effort, the ACO will so indicate and forward the information cited in subparagraph 8c(2). The request will also indicate any special security requirements associated with the review (see subparagraph 15.805-8a(1)).

d. *Scheduling.* When both technical and audit reports are requested, the due date for submission of the technical report should be established to permit the contract auditor to have the technical report at least 5 days prior to the due date for the audit report. However, quality in the technical report shall not be sacrificed merely to meet the 5-day requirement. The due date for the audit report should be established to permit adequate time for the price/cost analyst to evaluate and incorporate the effect of the audit findings into a comprehensive pricing report, but in no case should it be more than 15 days prior to the due date for the pricing report. These procedures are similarly applicable to any requests for or granting of extensions of due dates during the review and evaluation cycle.

e. *Requests for Audit Assistance.* Requests for audit assistance required to support review and evaluation efforts will be initiated promptly. The request will identify special areas to be emphasized, the specific factors or areas of the review which will be covered by other team members, the target date if a technical report will be furnished, the date the audit report is to be furnished to the price/cost analyst, and the number of copies required. In addition, the request will reference the report number of relevant prior pricing assistance provided by the auditor. If the review involves reimbursable effort, the request will so indicate and forward the information cited in subparagraph 8c(2). The request will also indicate any special security requirements associated with the review (see subparagraph 15.805-8a(1)).

f. *Requests for Technical Assistance.* The analyst will promptly initiate technical evaluations which are required. Requests to DCAS technical specialists will identify the specific quantitative and qualitative factors to be reviewed, areas for special emphasis, and due dates. For proposals which include costs for special tooling or special test equipment, the request will require an evaluation of the necessity for and correct classification of the proposed cost (see DLAM 8300.1, section 5-700). All requests for technical assistance on proposals less than the thresholds cited in 15.805-3b(1)(a) or 15.805-12b, except when the requests are for review of spare parts pricing proposals for which a prior TACP has not been performed, will identify the reason why the price/cost analyst considers the request necessary. In addition, the requests will identify the case number of relevant prior TACP's and forward information from pricing case files which might be useful in performance of the technical evaluation. If the review involves reimbursable effort, the analyst will cite the document control number in the request for technical assistance. The request will also indicate any special security requirements associated with the review (see subparagraph 15.805-8a(1)). Requests for technical assistance will be forwarded to the DCAS Production Division. If the TACP requires skills not available in the Production element, Production will forward the request for assistance to the Systems and Engineering element (or other technical element, depending upon the technical discipline required). However, this does not preclude the price/cost analyst from issuing separate requests to other pertinent technical elements when deemed appropriate.

g. *Evaluation of Audit Report.* Immediately upon receipt of the audit report, the price/cost analyst will make a preliminary review and advise the ACO of any areas in which it appears that significant differences may develop between the audit report and the review and evaluation being accomplished. If any information disclosed subsequent to the receipt of the audit report is such as to significantly affect the audit findings, the ACO should promptly advise the contract auditor, who will determine whether to issue a supplemental report.

h. *Evaluation of Technical Reports.* Upon receipt of a technical assistance report and prior to transmittal to the contract auditor, the price/cost analyst will review the report to assure that it contains adequate detail to explain:

(1) The supporting data and the records analyzed, reviewed, and evaluated. If there are no data to review, the report should so state.

(2) Items/areas reviewed and the reasons why they were considered necessary/unnecessary and

reasonable/unreasonable. If conclusions are based on the judgment of technical specialists rather than contractors' data, the report should so state. If the TACP report is received too late to permit incorporation in the audit report, the analyst should promptly review and forward a copy of the report to the auditor. In these exceptional cases, the analyst will incorporate the results of technical and audit reviews into the comprehensive report. A supplemental audit report will be issued if the auditor considers such action to be appropriate (see FAR 15.805-5(e).

i. *Unsupported Costs.* The price/cost analyst is responsible for determining that contractor-furnished data and supporting documentation are sufficient for review of proposed costs. Timely preanalysis review of a proposal by the price/cost analyst and thorough preanalysis meetings or discussions with participating audit and technical personnel, in addition to routine follow-ups with team members during the course of the review should disclose most areas of cost for which additional contractor documentation is required in time for the issues to be resolved prior to final report dates. If unsupported costs are discovered during the review, the price/cost analyst should immediately take action in accordance with the guidance in DLAM 8105.1, 15.805-10 and 15.805-11. If the contractor is unable or unwilling to provide needed data, the analyst is still responsible for presenting a recommendation to the contracting officer. If a definitive conclusion as to the proper amount of cost cannot be determined, the analyst should provide the negotiator a judgmental cost range and state what actions were taken to resolve the issues.

j. *Unresolved Costs.* The price/cost analyst is responsible for presenting the negotiator recommendations on proposed costs, including those costs subject to assist reviews. Prompt action in accordance with subparagraph c. above is necessary to prevent costs subject to assist reviews from being reported as unresolved. When assist reviews cannot be received in time for incorporation in the final report and the final report due date cannot be extended (15.805-6), the price/cost analyst should include in the final report those advance and/or partial recommendations that are available from the assisting office. The pricing report will include the expected receipt date of the assist review. It should also note that a supplemental pricing report will be issued upon receipt of the assist review, if appropriate.

15.805-13 Pricing Report

a. The pricing report shall reflect the comprehensive review and evaluation of the total field pricing team effort accomplished by the price/cost analyst. It will include the results of the price/cost analyst's evaluation, other pricing data relative to the proposal, technical data not incorporated in the audit report, information or analysis specifically requested by the PCO/ACO, and other data considered useful in negotiating the final price. The report should summarize what was analyzed, how it was analyzed and the conclusions reached.

b. A specific format is not prescribed; however, as a minimum the report should contain the following:

(1) A preamble which states:

"This report is a comprehensive review and evaluation of the contractor's proposal. If you require amplification of any data elements, you are invited to contact the ACO or price analyst. Each member of the pricing team (price/cost analyst, production engineer, transportation and packaging specialists, etc.) is available to participate in fact finding sessions and in the negotiation. We would appreciate receiving a copy of the PNM and any comments you may have which would help us improve the value of future reports."

NOTE: When less than a comprehensive review is performed or a pricing report is otherwise qualified and the review is limited, the first sentence should be modified accordingly. The reference to the ACO in the second sentence should be omitted when the local ACO has negotiation authority. The preamble may be omitted when a short form pricing report is used (15.801-13d).

(2) Identification of the contractor, purchase request, request for proposal or contract number; and the product or service involved.

(3) A summary comparison by major element of the proposal cost/price with the results of the analysis. The cost of special tooling or special test equipment and facilities capital cost of money will be shown as separate elements in the cost summary.

(4) Identification of the Government personnel participating in the review and evaluation.

(5) When price analysis alone is determined to be adequate, the description of the pricing data used in accomplishing the price analysis and a recommendation regarding the acceptability of the proposed price.

(6) Identification of the specific areas/elements of the proposal that were analyzed. If the TACP report was received too late to permit incorporation in the audit report and the audit and technical results were incorprated by the price/cost analyst, the report should so note. The analyst should indicate that the technical report has been provided to the auditor for issuance of a supplemental report if considered appropriate by DCAA.

(7) Identification of pertinent instructions and/or conversations with the contracting officer or any of the team members.

(8) Identification of cost or pricing data used in the analysis that were not identified in the proposal (see FAR 15.804-6(b) thru (d)).

(9) On specific cost elements, an explanation of the basis of the estimate, what was reviewed, conclusions reached, and the basis for the conclusion including a reconciliation or explanation of any differences of opinion of the various team members. If a definitive recommendation on a cost cannot be made because of insufficient contractor documentation or late assist reviews, the guidance in 15.805-12 i and j should be followed.

(10) A section of comments on the status of a cost monitoring program (see part 42.70), cost accounting standards (CAS) (see part 30.0), and any systems reviews performed by the Financial Services elements will be included in all pricing reports on proposals over $100,000. Such comments will also be included in pricing reports for proposals under $100,000 if considered relevant by the price analyst. Comments on CAS should include whether the CAS Board standards or Disclosure Statement (DS) filing requirements are applicable; status of the DS; and status of any CAS issues involving unresolved accounting changes, noncompliance issues, contract price adjustments or pending ASBCA cases that could impact the contractor's price proposal. If there are any deficiencies, DCAA Form 1's or "Notices of Intent to Disallow Or Not Recognize Costs" outstanding which could impact the contractor's price proposal, the financial effect will be separately discussed under the cost area affected. The status of other contractor systems and programs (e.g., property, quality, small business, energy conservation) reviewed or monitored by other elements of the CAO or other agencies will not be commented on routinely. However, if the price/cost analyst has knowledge of deficiencies in any of these area appropriate comments will be included in the pricing report.

(11) A section of profit comments that will assist the negotiator in establishing profit or fee, i.e., provide sufficient information to enable the negotiator to analyze performance risk, contract type risk, working capital, and facilities capital employed in accordance with DFARS 15.970, Weighted Guidelines Method. Comments concerning the contractor's participation in the Government's Small Business, Small Disadvantaged Business, and Labor Surplus Area programs may be developed from the information contained in the CPSR reports or provided by the Small Business Specialist. However, specific rates or amounts should not be recommended unless specifically requested. Weighted guidelines shall be used in the negotiation of all contract changes and modifications in excess of $100,000 that require cost analysis. No comment on profit will be included in the report where the PCO/ACO specifically requests such comments not be provided. When profit comments are omitted pursuant to a specific request, the report will so note.

(12) When the Financial Services review includes a pricing verification of contractor conformance with a "most favored customer" provision, the scope and results of review will be documented in the pricing report.

(13) Show and explain the calculation of proposed and recommended facilities capital cost of money and facilities capital employed (see DD Form 1861, Contract Facilities Capital and Cost of Money).

c. The audit and technical reports will be attached to the pricing report submitted to the ACO. The price analyst will provide the ACO with a copy of the DLA Form 715, Evaluation of DCAS Pricing Support, along with the pricing report, but not as an attachment to the report.

d. A short form pricing report should be used for low cost, noncomplex pricing actions where few or no exceptions are taken with the contractor's price proposal, and the more detailed, comprehensive pricing report is not needed to fully explain the basis of the price analyst's recommendations. The short form is for use only on proposals of less than $100,000 which are to be negotiated by ACOs. It is intended that the review or report cover only those areas or elements of the proposal considered by the analyst to be necessary to determine the reasonableness of the proposed price. However, in order to assure that the ACO receives sufficient data for negotiation, the price analyst should obtain concurrence of the ACO prior to issuing a short form report on reviews over $25,000. The short form pricing report should state that the price analyst is available to participate and assist in subsequent fact finding and negotiation. See paragraph 15.805-21 for a sample format that may be used or modified to fit special situations.

15.805-15 Information Designated "For Official Use Only" (FOUO)

a. DLAR 5400.14, Availability to the Public of Official Information, provides policy and procedures governing information to be designated FOUO.

b. To the extent that a pricing report incorporates or attaches FOUO documents, the total package or report should be marked FOUO. The exception would be when the originator of the FOUO material agrees to the removal of the designation.

c. Other pricing reports should be considered FOUO to the extent that they contain information which is considered not to be releasable to the public in accordance with the above-cited DLAR. If the pricing report contains only comments on data provided by the contractor in its proposal and does not include any sensitive data or any attachments marked FOUO, the report need not be marked FOUO. The decision whether to subsequently release a given report would be based upon the facts and circumstances as relate to that report irrespective of the restriction indicated on the report.

d. It is permissible to administratively indicate that certain types of documents will be considered FOUO but not require that they contain an FOUO marking, unless they are handled under circumstances where marking is considered necessary to ensure protection of the information contained therein. An example of documents that could be so administratively identified would be work papers and supporting documents furnished by the contractor or developed by the Government analyst, which are maintained in the pricing case file.

15.805-16 Review of Pricing Report

a. Pricing reports will normally be reviewed and approved by a supervisory price/cost analyst prior to submission to the ACO. DLA Form 716, Pricing Checklist, will be completed to document the accomplishment of all pricing cases identified in subparagraphs 15.805-5a through d for $100,000 or more. All reports will be signed by the analyst assigned responsibility for the review and will be approved and countersigned by the supervisory price/cost analyst (if a supervisor has been designated).

b. In situations where there is no supervisory price analyst at the DCAS office, the supervisory review of the pricing package will be accomplished subsequent to issuance of the report on a selective sampling basis by a supervisory or staff price analyst at DCASR or cognizant DCASMA. The criteria for selection for review will include the dollar value, case volume, experience of the price analyst, etc. The completed DLA Form 716, with a written critique as appropriate, will be provided to the price/cost analyst who developed the report.

c. The price/cost analyst will complete parts I and III of DLA Form 716, Pricing Checklist. The supervisory price analyst or staff price analyst will review parts I and III for accuracy and complete part II of the checklist. All items on the checklist shall be completed; items considered not applicable (NA) shall be indicated by placing an "X" in the "NA" box. Supervisors or staff price analysts should pay special attention during reviews of completed reports to ensure that the case files include properly indexed work papers supportive of the price/cost analysts' recommendations or conclusions. The price analyst and supervisory staff analyst must sign the completed form which shall be forwarded with the pricing report to the ACO (see subparagraph 15.805-15e). The completed checklist, which is returned to the price/cost analyst, provides feedback regarding the strengths and weaknesses evidenced in the pricing report.

d. When the pricing report is considered inadequate using the checklist criteria, the report will be returned to the price/cost analyst (except where the report has been issued in accordance with subparagraph b above) for correction or improvement. Appropriate comments may be included in the Remarks section of the completed checklist for reference to significant changes or rewrites of the report.

e. The ACO shall review pricing reports cited in subparagraph 15.805-15a and note such review by signing DLA Form 716 and returning the completed form to the Financial Services element for filing in the pricing case file. Appropriate ACO comments may be included in the Remarks section of the checklist.

f. To assure that the pricing report requiring submission to the PCO will be mailed from the DCAS activity as scheduled, the price/cost analyst should coordinate with the ACO to preclude any delays which could result from ACO review of the pricing case. One technique that might be used is to have the analyst orally discuss the case with the ACO and incorporate any ACO comments either in the pricing report or in a transmittal to be signed by the ACO. Another technique might be to provide the ACO a copy of the draft pricing report to be reviewed simultaneously with the supervisory pricing review.

15.805-17 Completing Pricing Cases

a. *ACO Comment and Transmittal Letter.* Where the negotiation is to be conducted by the PCO, the ACO will review the pricing report and transmit it with comments to the PCO. When the ACO considers additional comments appropriate, they should consist of any data and information not included in nor adequately discussed in the pricing report that would be helpful to the PCO in conducting negotiations. Examples of comments could include the ACO's negotiation experience with the contractor, the contractor's performance record, special terms and conditions to be considered in the contract that would improve contract performance and/or facilitate contract administration. The transmittal letter will include a statement requesting the PCO to provide a copy of the negotiation memorandum in accordance with FAR 15.808. When the ACO receives a DLA Form 715 with the pricing report, the ACO's transmittal letter will enclose the form and include a statement requesting the PCO to complete and return the form. A copy of the ACO's transmittal letter will be furnished the Financial Services element.

b. *Negotiation Assistance*

(1) When it becomes apparent that the negotiations will require the resolution of complex problems which involve items significant in amount, the negotiator (ACO or PCO) may request attendance of appropriate representatives of the review team at the prenegotiation and negotiation meetings (see subparagraph 13b(1)). PCO requests for attendance of DCAS personnel at prenegotiation or negotiation meetings should be honored if within the capability of workload and funding resources. When the contractor is located near the DCAS facilities, the ACO should encourage the PCO to utilize the DCAS facilities for prenegotiation and/or negotiation conferences.

(2) The Contracts element should assure that all personnel involved in field pricing reviews are from time to time afforded the opportunity to participate in negotiations conducted by its ACOs. This will provide members of the pricing team with a more in-depth understanding as to the necessary elements of a properly supported, defensible recommendation.

c. *Price Negotiation Memorandum (PNM) and DLA Form 715, Evaluation of DCAS Pricing Support*

(1) PNMs received from PCOs will be forwarded directly to the assigned ACO for his review and analysis. All PNMs whether received from a PCO or prepared by the ACO, will be routed to the official contract file via the Financial Services element and other functional elements having a direct interest in the information reflected therein. When the ACO conducts a price negotiation which involves the use of a DCAA audit report, a copy of the PNM will also be sent to the cognizant auditor.

(2) DLA Forms 715 received from PCOs will be reviewed by the assigned ACO and forwarded to the Financial Services element. The Financial Services element will route a copy of the DLA Form 715 to other functional elements having a direct interest in the information reflected therein.

(3) The price/cost analyst will review the PNM and/or the DLA Form 715 to determine whether internal improvements are required to better support the PCO in future pricing efforts. In so doing, the analyst will consult with other specialists who provided input to the pricing package, and will advise them of the improved techniques to be applied to future evaluations. A written record of action taken as the result of the PNM and/or comments on the DLA Form 715 will be filed with the document.

(4) If the PCO does not furnish the ACO a copy of the PNM, no routine follow-up request will be made. However, specific PNMs may be requested to help evaluate the effectiveness of field pricing inputs. If the ACO has or is delegated any subsequent negotiation responsibility on a contract, the ACO will initiate a follow-up request explaining the need for the PNM. In addition, DCAA may request the ACO to obtain the PNM for their use. The ACO, as the field pricing team leader, should forward the request to the PCO, including an explanation as to why the PNM is needed and by whom. Since the PCO is not obligated to complete and return DLA Form 715, follow-up action to obtain the form will not be initiated.

(5) Upon completion of review of the PNM, it will be filed in the official contract file or in the price cost analysis case file if the contract has not been assigned to the DCAS office for administration. DLA Form 715 will be accumulated by the Financial Services element in a file, separate from the pricing case file.

(6) Whenever applicable, but particularly in those situations where the ACO performs subsequent negotiations, data contained in the PCO's PNM will be utilized to the fullest extent. Such data should not be conveyed to the contractor in any manner that would give the contractor an advantage in future negotiations with the Government.

15.805-18 Certification Requirement. When cost or pricing data must be certified as required by FAR 15.804-2 the certificate set forth in FAR 15.804-4(a) will be obtained as soon as practicable after agreement is reached on the price and prior to award of the contract or execution of the supplemental agreement by the:

a. PCO, when he conducts final negotiations.

b. ACO, when he conducts final negotiations regardless of whether he has definitization authority.

15.805-19 Defective Cost or Pricing Data

a. Contractors are required by Public Law 87-653 to submit or identify to the contracting officer or his representative (i.e., ACO, PA, ENG, auditor, etc., involved in the price proposal evaluation or negotiation) all relevant cost or pricing data. In order to sustain a price reduction claim for defective pricing, however, the Government must prove that it did not have actual knowledge of the data and its relevance to the price negotiations. These Government personnel should, while performing their normal duties, be alert to situations which may constitute defective pricing. For example, while reviewing other proposals or PNMs pursuant to subparagraph 16c(3), the price/cost analyst should be alert for indications of a potential for, or probable violation of, P.L. 87-653 (e.g., a substantial delay in negotiations, especially without proposal updating). Each member of the CAO pricing team has the inherent responsibility to notify the procuring activity, through the price/cost analyst and ACO, of any known proposal or contract price disparity which may involve defective pricing. Upon discovery of such information prior to, or subsequent to, the date of price negotiations, all pertinent facts will be promptly forwarded to the local Financial Services element for review, evaluation and appropriate action.

b. The assigned price/cost analyst will consider all available data utilized to support the contract price, changes in make-or-buy decisions, changes in subcontracting arrangements, cost underruns or any other data that may impact on the possible defective pricing.

c. Upon completion of the analysis, the price/cost analyst will submit a written report of the findings to the ACO, identifying all data reviewed. In the event the basis for possible defective pricing is questionable, the ACO will furnish an information copy of the price/cost analyst's report to the PCO. In the event defective pricing is indicated, the ACO will coordinate with the PCO, and unless otherwise directed by the PCO, submit the report to DCAA for postaward audit. In either case, the initiator of the review will be advised of the actions taken.

d. DCAA also has a program for initiating defective pricing reviews. In accomplishing their review, DCAA may request technical assistance from a DCAS office. The Financial Services element is responsible for coordinating and evaluating the DCAS office assistance provided to the contract auditor.

e. DCAA procedures require that the ACO will be provided a copy of the audit report where the review was DCAA-initiated or requested by the PCO. The ACO will receive the original audit report when the ACO requests the audit or when the ACO is assigned responsibility for resolving the report of defective pricing. The Financial Services Element will review the report and provide comments or other support as requested by the ACO.

f. When the ACO receives an information copy of a defective pricing audit where the PCO has negotiation responsibility, the ACO will perform only those actions requested or delegated by the PCO.

g. When the PCO requests audit through the ACO, the ACO will provide his comments along with the audit report to the PCO and perform tasks or actions as requested by the PCO. The ACO's comments to the PCO should include pricing comments and any information not included in the audit report that would assist the PCO in determining a course of action to pursue.

h. Defective pricing audit reports on procurements where the ACO has negotiation responsibility will be submitted to the Financial Services element for review and evaluation. Upon receipt of the Financial Services comments, the ACO should refer the package to the DCASR legal staff for their advice and an opinion as to whether defective pricing or fraud is involved. After receipt of the legal opinion, the ACO will contact the PCO and advise him of the case. If the PCO chooses to process the case, the ACO will forward copies of pertinent papers from the case to the PCO and await direction from the PCO. If the ACO is to process the case and it involves fraud, he will turn the case over to the DCASR legal staff and provide assistance as requested. If the ACO is to proceed with a defective pricing case not involving fraud, he should conduct a fact-finding session with the contractor. If after the fact-finding session the ACO determines defective pricing does exist, he will proceed in accordance with FAR 15.804-7. See part 90.01 for audit follow-up requirements pertaining to defective pricing reviews performed by DCAA. Such provisions apply to the DLA(CAS) ACO only if the ACO had negotiation responsibility for the action in question and the PCO requested that the ACO process the case.

i. Upon receipt of a defective pricing audit report, the ACO will record and suspense ensuing actions in the same manner as other contractual actions requiring pricing definitizations, e.g., letter contracts, change orders, etc. A chronology of significant actions and events relating to a specific defective pricing audit report will be maintained in the official contract file.

15.805-20 Overpricing and Overcharging. DLA and DCASR representatives have the inherent responsibility during the normal performance of their duties to assure that proper authorities are immediately notified of any known price disparity which is contrary to the best interest of the U.S. Government. DCAS personnel must be alert to situations where U.S. Government departments and agencies are not getting quality items at prices consistent with the prevailing market, catalog list prices or prices available from alternate suppliers. Principally, these situations are centered in the low dollar items category and do not normally receive the protection afforded DoD acquisitions by P.L. 87-653. When the overcharging or overpricing on a specific item becomes apparent, the matter should be brought to the attention of the cognizant ACO. If the contract price in question was established by the PCO, the matter should be referred to the PCO for whatever action is considered appropriate. If the ACO was responsible for pricing the item, the ACO shall take appropriate action to obtain a contract price adjustment. If the case involves an apparent violation of P.L. 87-653, the procedures in 15.805-18 apply.

15.805-20 Disclosure of Audit Results to Contractors

a. DCAA procedures require audit reports (with certain exceptions) to include a statement that DCAA has no objection to the release of the report, at the discretion of the contracting officer, to the contractor or subcontractor on whom the report was issued.

b. In addition, audit reports issued on subcontractors will contain a statement that DCAA does not object to release of the report to the prime or upper-tier contractor. However, if the subcontractor objects to the release of the audit report, the statement will be omitted from the report. In lieu thereof, the audit report will state the subcontractor's objection and that the report should not be released outside Government channels without permission of the subcontractor.

c. Audit reports relating to matters where the PCO has final authority will be forwarded to the PCO for action. Where the ACO has the authority to negotiate and definitize, he will be guided by the following paragraphs.

(1) Release of the audit report on a prime contract is within the discretion of the ACO, subject to DoD Directive 5400.7, Availability to the Public of DoD Information, as implemented by DLAR 5400.14. When a contractor on whom the report was issued requests a copy of an audit report, the ACO should grant the request unless in his opinion compliance would clearly affect the Government's negotiating position. In the latter situation, the procedures in DLAR 5400.14 will be followed.

(2) Release of the audit report on a subcontractor to the prime contractor is within the discretion of the ACO. In the event the subcontractor objects to release of the audit report, the ACO will withhold release, but will advise the prime contractor of the objection and request that the matter be resolved between the contracting parties.

d. When the subcontractor submits a request for a copy of the audit report to the ACO, the procedures outlined in subparagraph c(1) above will apply.

~~15.805-21~~ Short Form Pricing Format.
15.805-22

(Note: To be prepared on local letterhead stationery)

DATE:

SUBJECT: PRICE/COST ANALYSIS REPORT FOR PROPOSALS OF LESS THAN $100,000

CONTRACTOR: ....

PRICING CASE NO. ....

CONTRACT NO. ....

FROM: (PRICING)

TO: (ACO)

1. CONTRACTOR PROPOSAL DATE:
2. PROPOSAL AMOUNT:
3. BRIEF SUMMARY OF TASK OR STATEMENT OF WORK:
4. COMMENTS ON PROPOSAL ELEMENTS REVIEWED, NOT REVIEWED, EXPLANATORY COMMENTS, ETC:
5. SUMMARY OF EXCEPTIONS TAKEN, AND RATIONALE SUPPORTING EXCEPTION:
6. SUMMARY OF RECOMMENDED AMOUNT:
7. The price analyst is available to participate and assist in fact finding and negotiation sessions on this proposal.

PRICE ANALYST

SUPERVISORY PRICE ANALYST

15.807 Prenegotiation Objectives

15.807-1 References

a. FAR 15.807, Prenegotiation Objectives.

b. DFARS 15.807, Prenegotiation Objectives.

c. DLAM 8105.1, 90.01 Contract Audit Followup.

d. DoD Directive (DoDD) 7640.2, Policy for Followup on Contract Audit Reports, 12 Feb 88.

15.807-2 General

a. Current DoD policy requires its Contracting Officers (ACOs/TCOs/PCOs) to resolve and disposition *all* contract audit report findings and recommendations. Since resolution is a prenegotiation act, DCAS ACOs/TCOs are required to develop prenegotiation objectives prior to the negotiation of any pricing actions and/or disposition of findings and recommendations contained in preaward and postaward contract audit or other advisory reports.

b. This part provides guidance in the preparation, review, approval, and distribution of prenegotiation objectives.

15.807-3 Procedures

a. It is essential that technical evaluation reports, price/cost analyses, audit reports and contractor comments/rebuttals, as appropriate, are obtained and given due consideration by the ACO/TCO prior to formulating the Government's prenegotiation position.

b. Leadership in the development and preparation of price/cost analyses will be provided by the Price/Cost Analyst.

c. Written prenegotiation objectives of all ACO/TCO negotiation actions will be prepared using Exhibit 1, or similar prenegotiation plan format subject to the following review/clearance procedures:

Basic Review and Approval Authority

(1) ACO/TCO: Prepares and recommends approval of prenegotiation objectives regardless of dollar value.

(2) First Line Supervisor/Section Chief: (a) Approves prenegotiation objectives up to $250,000. (b) Reviews and recommends approval of prenegotiation objectives over $250,000 thru $500,000.

(3) Branch Chief, Contract Operations: (a) Approves prenegotiation objectives over $250,000 thru $500,000. (b) Reviews and recommends approval of prenegotiation objectives over $500,000.

(4) Division Chief, Contract Management: (a) Approves prenegotiation objectives over $500,000. (b) Reviews and recommends higher level of review/approval of prenegotiation objectives in accordance with local guidance.

d. If any of the above prenegotiation review/approving official positions is vacant or nonexistent, the next level of management will serve as the review/approving official. In special situations, such as negotiation of items of particular interest, sensitivity and complexity, the Region official authorized to issue supplements to the DLAM 8105.1 may authorize on a permanent or temporary basis higher levels of review/approval.

e. In the event of disagreement between the ACO and the reviewing/approving official, the matter will be escalated through the normal chain of management review until the disagreement is resolved.

f. In addition to the information required by Exhibit 1, the ACO/TCO must address the following factors when preparing the prenegotiation objectives.

(1) Cost/price negotiation objectives are to be stated as a range with a minimum, target and maximum amount.

(2) Prenegotiation objectives will clearly differentiate between "issues to be negotiated" and "work to be eliminated."

(3) Information obtained during fact finding and/or comments from the contractor, as appropriate shall be included in the prenegotiation objectives.

(4) The Prenegotiation Objectives Memorandum will address the extent to which the specific audit recommendations for DCAA audit attendance at negotiations was considered or accomplished. The ACO/TCO in coordination with the cost/price analyst shall make the preliminary decision as to whether the attendance of the auditor is required. This decision shall be based upon the complexity of the issues and the dollars involved in the auditor's questioned/unsupported costs. The cognizant auditor shall be contacted by the ACO/TCO to seek agreement on his/her attendance.

(5) A draft of the proposed contractual document, as appropriate, must be attached to the plan.

g. The ACO/TCO will submit the following information, as appropriate, with the prenegotiation objectives/plan.

(1) Funding Certification(s)

(2) Contractor Proposal(s)

(3) Cost/Price Analysis Report(s)

(4) Technical Evaluation Report(s)

(5) DCAA Audit Report(s)

(6) Copy of the Unpriced Order or Change Order etc., that is being negotiated.

(7) DD Form 1547—Record of Weighted Guidelines Application

(8) Form CASB-CMF (Cost of Money Factors)

(9) Miscellaneous Report(s) or any other data used in the development of the cost/price prenegotiation objectives.

h. Deviations from the range of objectives established in the prenegotiation plan must be fully explained in the Price Negotiation Memorandum (PNM) or similar Disposition Memorandum.

i. Waiver of Prenegotiation Objectives. If it is not feasible to formally document prenegotiation objectives, the ACO/TCO must brief and obtain oral concurrence from the appropriate reviewing official prior to negotiation. These waivers should be granted only for instances of extreme urgency. The waiver request should be documented in the files.

15.807-4 Distribution of Prenegotiation Objectives. After approval of the prenegotiation objectives, the ACO/TCO will distribute copies of the prenegotiation objectives/plan in accordance with local guidance; however, the original will be filed in the contract file.

PRENEGOTIATION OBJECTIVES

MEMORANDUM DATE: ____________

TO: ____________

FROM: ____________, Administrative Contracting Officer

SUBJECT: Plan for Conducting Negotiations with;______________________________
for: (*identify the type of action to be negotiated e.g., final overhead rate, CAS cost impact, definitization of change orders, provisioning requirement etc. For forward pricing actions, describe type of action (i.e. indirect costs, labor rates etc.) or state the type of contract that will be used; i.e., Firm fixed Price, Fixed Price Incentive etc*).

A. General Information *

1. ☐ Non-competitive ☐ Changes ☐ Other (explain)

____

2. Proposal(s): Date ________________ Amount $______________________________

3. Justification and Approval (J & A) No. ________________ Date____________________

4. Authority to Negotiate (*Cite appropriate contract clause or FAR reference*)

5. Synopsis Requirement Yes Date ____________ No (if no, Explain) ______________

6. Legal Review Yes ____________ No____________

7. Subcontracting Plan is ____________is not ____________applicable

8. Audit Report No. ____________ Date ____________ Cost Questioned $____________

9. Contractor Letter: Date____________

10. Tech. Eval. by: ____________________ Code ____________ Date____________

11. Cost/Price Anal. by: ____________________Date____________

12. Gov't Negotiating Team____

* If not applicable, enter N/A

Exhibit 1

B. Negotiation Objectives

1. Contractor Exceptions/Government Position

2. Cost/Price Objectives (see Attachment 1 & 2 for detail)
   Minimum $ Target $ Maximum $

3. Other Negotiation Objectives: (Items not related to cost or price)

4. Justification of Cost/Price Objective:

C. Offeror is not on the Debarred, Ineligible and Suspended Bidder listing

D. Exhibits

1. Funding Certification(s)
2. Contractor Proposal(s)
3. Cost/Price Analysis Report(s)
4. Technical Evaluation Report(s)
5. Copy of Unpriced Order(s)
6. DD Form 1547 — Record(s) of Weighted Guidelines Application
7. Form CASB — CMF (Cost of Money Factors)
8. Miscellaneous Report(s)

Exhibit 1

Page 2 of 3

Approval Recommended:		Approved:	
Administrative Contracting Officer (1)	Date	First Line Supervisor/Sec Chief (4)	Date
Supervisory ACO/Sec Chief (2)	Date	Chief, Contract Operation Branch (5)	Date
Chief, Contract Operation Branch (3)	Date	Chief, Contract Management Division (6)	Date
		Chairman Board of Review (7)	Date

Notes:

(1) Prepares and recommends approval of prenegotiation objectives regardless of dollar value.

(2) Reviews and recommends approval of prenegotiation objectives of over $250,000 thru $500,000.

(3) Reviews and recommends approval of prenegotiation objectives of over $500,000.

(4) Approves prenegotiation objectives up to $250,000.

(5) Approves prenegotiation objectives over $250,000 thru $500,000.

(6) Approves prenegotiation objectives over $500,000.

(7) Higher level of review/approval required by local guidance.

Exhibit 1

COST/PRICE OBJECTIVE

Cost Element	Contractor Proposed	DCAA Recommended	Government Objective	Total Variance		Ref * Notes
				Negotiation Difference	Eliminated Work	
Direct Labor						
Engineering						(A)
Manufacturing						(B)
Other						(C)
Total Direct Labor						
Overhead ($/% of Direct Labor)						
Engineering						(D)
Manufacturing						(E)
Other						(F)
Total Direct Labor						
Materials						(G)
Subcontracting						(H)
Travel (transportation & Per Diem)						
Other Direct Costs						
Total Other Direct Costs						
Independent R&D Cost ($/%)						(K)
General & Administrative ($/%)						
Expense ($/%)						(L)
Total Cost						
Cost of Money						(M)
Fee or Profit						
($/% of Total Cost)						(N)
Total Price						

* Discussion of Specific Elements of Cost
Treat each direct cost separately and provide detail and rationale for the dollars included in the Government objective. Indirect costs and G & A expense may be treated under the category of overhead rates, again with rationale for the rates used for each Government objective. Cost of money factors and profit should be supported with appropriate exhibits (DD Form 1547 and Form CASB-CMF).

Exhibit 1 — Attachment 1

PRENEGOTIATION OBJECTIVES COST/PRICE OBJECTIVE REFERENCE NOTES

Exhibit 1 — Attachment 2

15.808 PRICE NEGOTIATION MEMORANDUM

15.808-1 References

a. FAR 15.808, Price Negotiation Memorandum.

b. DFARS 15.808, Price Negotiation Memorandum.

c. ASPM No. 1, Defense Acquisition Regulation Manual for Contract Pricing Chapter 7.

d. DoD Directive 7640.2, Policy for Followup on Contract Audit Reports, 12 Feb 88.

e. DLAM 8105.1, 15.807, Prenegotiation Objectives.

f. DLAM 8105.1, 15.809, Forward Pricing Rates, Factors and Formulas.

g. DLAM 8105.1, 42.7, Establishing Overhead Rates.

h. DLAM 8105.1, 90.01, Contract Audit Followup.

15.808-2 General. At the conclusion of each price negotiation, the ACO shall prepare a record of price negotiation, known as the Price Negotiation Memorandum (PNM), in accordance with the requirements of FAR and DFARS 15.808.

15.808-3 Content of the Price Negotiation Memorandum. In addition to the elements required by FAR and DFARS 15.808(a), include, as applicable, pertinent information such as that described below (for final overhead rate negotiation memoranda, see 42.7 and FAR 42.705-1(b)(5)(iii); for FPRA/FPRR negotiation memoranda, see 15.809-3, 15.809-4, and FAR 15.809; and for items subject to contract audit followup, see 90.01):

a. Background

(1) Description of proposed action including scope of work to be performed or type of supplies to be furnished.

(2) The proposed delivery schedule or performance period and a statement as to the contractor's past delivery history.

(3) Any special conditions or considerations involved in the proposed action.

(4) A statement as to whether or not the action is subject to the provisions of 90.01.

b. Authority

(1) Specific authority for the action including date, issuing activity, and any other pertinent data.

(2) Funds appropriation data.

c. General Information. Narrative of pertinent elements, such as use of Government-owned facilities, special tooling, special contract provisions, or progress payments. On modifications, current contract delivery status, changes in inspection/acceptance point, and shipping instructions.

d. Proposal and Negotiation Summaries

(1) Essential elements of contractor's proposal, including when applicable, reference to the SF 1411, Contract Pricing Proposal Cover Sheet or SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data.

(2) Narrative describing the extent of evaluation performed, including reference to all advisory reports and data obtained by the ACO to support the decision made, such as pricing and audit reports, and the reasons for any pertinent variances from those recommendations, contractor comments, PCO advice, and production evaluations, as appropriate. Attach schedules or exhibits if required for clarification. The disposition of contract audit recommendations, including reasons for not accepting recommendations by the auditor (see 90.01), shall be clearly described in the PNM.

(3) The negotiation objectives and significant aspects of the negotiation. When the weighted guidelines method was used to develop the profit/fee objective, a copy of the applicable DD From 1547, Record of Weighted Guidelines Application will be attached to the PNM.

15.808-4 Format. A suggested format for a PNM and guidance as to the details required to support statements made therein are contained in ASPM No. 1. While all of the data discussed therein may not be applicable in all cases, ACOs should utilize those portions and details considered necessary in each specific case.

15.808-5 Supervisory Review of Prenegotiation Objectives. Supervisory review/approval of ACO negotiation action will normally be performed in accordance with 15.807-3.

15.808-6 Special Requirements for Action Subject to Contract Audit Followup. If the item or recommendation is subject to resolution and reporting requirements as outlined in 90.01, the ACO should seek resolution of audit findings in accordance with reference d. The ACO shall promptly prepare a PNM (or other comparable documentation if a PNM is not normally prepared for the action being considered) covering the disposition of all audit reports. The memorandum shall discuss the disposition of all recommendations and cost questioned/qualified amounts, including the underlying rationale for such dispositions. A copy of the memorandum shall be provided to the cognizant contract auditor before a report may be closed.

15-809 FORWARD PRICING RATES, FACTORS, AND FORMULAS

15.809-1 References

a. FAR 15.809, Forward Pricing Rate Agreements.

b. DFARS 15.809, Forward Pricing Rate Agreements.

c. DFARS Manual for Contract Pricing (ASPM No. 1) (15 Sept 75).

d. DAR 3-807.8, Forward Pricing Rate Agreements (FPRAs).

e. DARM No. 1, Defense Acquisition Regulation Manual for Contract Pricing.

e. DLAH 8115.1, Guide for Monitoring Contractors' Indirect Cost.

15.809-2 General

a. Forward pricing rates and factors are used by contractors in developing price proposals on new procurements and changes to existing procurements. Frequently used rates and factors include: direct labor rates; various overhead rates; cost of money factors; material handling rates; scrap; spoilage and obsolescense rates; support labor factors (e.g., for quality, test and production control); labor efficiency factors, etc. When the contractor has a significant volume of pricing actions, it may be beneficial for the Government and contractor to establish a written Forward Pricing Rate Agreement (FPRA). If the contractor is unwilling to enter into an FPRA because of frequently changing business conditions or other circumstances, the ACO will establish a Forward Pricing Rate Recommendation (FPRR) for use by program offices and PCOs having a substantial volume of business with the contractor.

b. Contractors often use a standard price buildup methodology based on forward pricing rates and factors in high-volume lower cost repetitive procurement situations such as spare parts pricing. Typically, the unit cost and/or price of each spare part would be calculated by applying appropriate add-on factors and rates to base production (or total) labor hours and material quantities. This technique places heavy reliance on historical experience, but it can result in accurate pricing on the average over the period of its use. Even though each part may not be priced as accurately as could be obtained using a price buildup method for individual parts, the estimating convenience and averaging out of estimating inaccuracies which result over time justify its use in certain circumstances. In addition, formula pricing facilitates development of specialized computer cost models which can result in further time savings in the pricing and negotiation processes.

15.809-3 Procedures for Establishing an FPRA

a. Guidance on initiation and establishment of FPRAs is in FAR 15.809(a). The Cost Monitoring Specialist (CMS) at contractor locations where a Cost Monitoring Program (CMP) has been established, the price/cost analyst, the Region Cost Monitoring Specialist (RCMS), and the contract auditor will be available to assist the ACO in establishing the agreement.

b. When conditions warrant establishment of an FPRA, the ACO will request the contractor to submit an FPRA proposal to the Government in a format agreeable to the contractor and the ACO. The proposal (and the agreement) normally should cover all fiscal periods for which rates and factors will be required in pricing actions during the forthcoming year(s). The request for proposal normally will be made at least six months in advance of the period for which the rates will apply in order to permit contractor preparation, Government review, and negotiation of the FPRA prior to the beginning of the applicable period. The contractor's submission may be based upon an initial budget submitted to the corporate office if it can be shown historically that the initial submission and the approved budget are generally in close agreement. The contractor's proposal should contain adequate data and rationale as appropriate to support the following budget estimates for each time period covered by the over proposal:

(1) Projections or assumptions supporting the sales forecast (including identification of potential buyers, e.g., specific Government buying activities, foreign military sales and commercial sales). Any difference between the instant sales forecast and that submitted in connection with negotiation of an advance agreement for IR&D/B&P for the period covered by this proposal should be identified.

(2) Planned production scheduling, planned engineering projects, projected material usage, and product delivery assumptions.

(3) Projected major indirect expenses which make up the proposed overhead expense pool or cost center expenditures.

(4) Projected base(s) used to allocate the indirect costs.

(5) Major planned capital expenditures including plant expansion.

(6) Pending corporate structure changes, i.e., mergers or divestitures.

(7) Changes or inconsistencies with previously disclosed methods of allocating costs to the overhead pools or cost centers.

(8) Plant or equipment renovation plans.

(9) Plans for disposition of idle facilities or idle capacity.

(10) Increases in direct and indirect labor rates (refer to union and collective bargaining agreements as appropriate).

(11) Anticipated changes in fringe benefits.

(12) Impact on labor costs resulting from changes in labor skill mix.

(13) Equivalent number of employees expected to be charged to overhead, forecast by time period, function and location.

(14) Equivalent number of employees expected to be charged direct to contracts, forecast by time period, function, and location.

(15) Planned efficiencies which affect costs.

(16) Economic factors and conditions that are reasonably expected to exist at specified future periods.

(17) Pricing factors used for travel, material handling, spoilage, etc.

(18) Ratio of indirect labor costs to direct labor costs.

(19) Any specific item, area, or function within the proposal that the ACO determines should be explained or expanded.

The proposal must identify estimating methodologies, judgments, assumptions and information sources which are subject to validation and verification by the Government review team. If the contractor's proposal does not contain data adequate for meaningful analysis, it will be amended or supplemented by the contractor, or returned for appropriate resubmission.

c. The ACO will request that the CMS or price/cost analyst prepare a comprehensive pricing report, including technical and audit evaluations. The report will include comments concerning inefficiencies or unallowable costs reflected in historical costs when the proposal or analysis for an FPRA or FPRR is based on incurred costs. The report also will address the validity of the contractor's projected sales volume, as verified through contact with system program offices or other buying activities having significant business with the contractor, and as compared with prior years sales and/or projections for the same period, etc. The technical review will include comments on the contractor's anticipated labor and material requirements estimated for current and projected business and other factors in the contractor's budget. If an IR&D and B&P advance agreement has not been negotiated for the period for which rates are being established, the CMS, or price analyst will obtain dollar estimates for use in forward pricing and interim billing rates from the cognizant negotiating activity (see 31.109). The proposal evaluation must be accomplished in sufficient scope and depth to establish the accuracy of factual data and credibility of the contractor's management judgments and assumptions.

d. Prior to establishing the forward pricing rate agreement, the ACO will invite, in writing, the RCMS and procuring activities having significant business with the contractor to participate in the negotiation and prenegotiation sessions. A copy of the ACO's negotiation objectives will be provided to prospective attendees. The RCMS will review the ACO's objectives to assure they reflect the most current DoD cost policy and to assure uniformity and consistency in the treatment of costs between and among major DoD contractors.

e. When an agreement is reached with the contractor on forward pricing rates, factors, and/or pricing formulas, it will be formalized in a written document executed by the ACO and the contractor containing the provisions specified in FAR 15.809(c). Limitations as to types of acquisitions (e.g., spare parts, basic ordering agreements, change orders, etc.) or dollar value of the pricing actions to which the rates or factors may be applied will be specified, as well as the indirect expense pools, bases, and periods for which the rates apply.

f. The FPRA should be supported by a memorandum describing the pertinent events and considerations related to the establishment of the agreement. The FPRA negotiation memorandum should include the following:

(1) Date(s) and place(s) of negotiations.

(2) Names and titles of participants (identify principal negotiators).

(3) Date(s) of contractor's proposal and amendments, if any.

(4) Efforts made to obtain pricing, technical, DCAA, program office or buying activity, CACO or other formal evaluations of the proposal.

(5) A summary of the proposed dollars and/or hours, applicable allocation bases, and resulting forward pricing rates. This summary should identify the contractor's position, the Government team's last known (fully documented) objective(s), and the negotiated agreement. Reasons for departing from negotiation objectives should be documented.

(6) Comparative data analysis (including discussion of the business base and comments on the assessment of firm, near-firm, anticipated and potential new business considerations), major elements of costs proposed (including an analysis of fringe benefits by element) plus a discussion of escalation, as appropriate.

(7) The extent to which reliance was not placed upon contractor submitted cost or pricing data.

(8) Other comments considered necessary to assure that the FPRA is equitable and in the best interests of the Government.

g. A copy of the FPRA negotiation memorandum and the proposed agreement will be provided to the Review Board for appropriate action (see part 90.16).

h. Negotiation participants, the RCMS, and other PCOs having repetitive business with the contractor shall be furnished a copy of the executed FPRA. When necessary, supporting organizations should be provided with comments and recommendations on how they can modify their input to increase their effectiveness in future reviews or negotiations.

15.809-4 Procedures for Establishing an FPRR

a. An FPRR should be established for Government pricing purposes when warranted by the volume of pricing actions. Such rates should be established for administrative convenience when the number of pricing actions is significant, and the contractor will not enter into an FPRA or an FPRA has not been established.

b. FPRRs will be established in the following situations:

(1) When the ACO is unable to reach agreement with a contractor on a proposed FPRA as outlined in paragraph 15.809-3.

(2) During the interim period between the conclusion of negotiations and the ACO's action on Review Board recommendations and/or opinions on proposed FPRAs or FPRRs. The formal FPRA or FPRR will be effective as of the date of the ACO's action.

(3) For use in the evaluation and negotiation of contract proposals pending receipt and negotiation of a new FPRA proposal after discontinuance of an existing agreement.

(4) When the contractor will not submit an FPRA proposal.

c. The ACO's establishment of an interim FPRR under (2) and (3) above should be based on sufficient information to protect the interests of the Government during the interim period, including the monitoring of FPRRs prescribed by DLAM 8105.1 paragraph 15.809-5.

d. In establishing an FPRR, the ACO should solicit buying office support for its use. The ACO will also request that buying offices encourage the contractor to enter into an FPRA in the future.

e. Documentation for the FPRR should:

(1) Explain that the rates are unilateral recommendations which have been coordinated with and agreed to by DCAA. If DCAA nonconcurs, provide brief explanation why DLA position is preferable and in the best interest of the Government.

(2) Specify rates and periods of applicability.

(3) Briefly explain either why contractor refuses to enter into an FPRA, or the principal reason(s) causing replacement of an FPRA with an FPRR.

(4) Provide estimate of when rates will be revised.

(5) If appropriate, identify the supporting documentation for the major areas(s) of difference between the FPRR and the contractor position(s) reflected in the FPRR Memorandum (DLAM 8105.1, paragraph 15.809-4f).

f. The memorandum supporting establishment of an FPRR will:

(1) Briefly explain the necessity and circumstances associated with the establishment of the FPRR, including why the FPRR is in the best interests of the Government.

(2) Identify the technical evaluation(s) or other inputs used in arriving at or determining the Government FPRR.

(3) Summarize the contractor and Government positions concerning the forward pricing rates and factors, including rationale and support for the Government's position. Support for the Government's position should be limited to information concerning the major areas of difference between the FPRR and the contractor's proposed rate(s). For example, comparative data related to the forecast business bases, major elements of proposed cost, and escalation may be appropriate if they represent major areas of difference.

(4) If DCAA disagrees with the FPRR, provide brief explanation why DLA position is preferable, and in the best interest of the Government considering ACO attempts to resolve area(s) of differnce with DCAA. This explanation should be sufficient to solicit buying office support and use of the DLA position in prime contract negotiations.

g. Except for interim FPRRs established under subparagraphs b (2) and (3) above, the supporting memorandum will be provided to the Review Board for appropriate action (see Part 90-16).

15.809-5 Monitoring of FPRAs and FPRRs. It is essential that FPRAs and FPRRs are reviewed periodically to assure they are reasonably accurate.

The cognizant CMS or price analyst will establish a system to track resources and dollars expended by the contractor for indirect costs and the related allocation base(s). The purpose of tracking is to periodically test the validity of FPRAs or FPRRs.

a. As a minimum, a review should be performed monthly or quarterly by comparing the actual expenditures with planned expenditures by individual overhead cost element and the proposed cost input to actual cost input. Further, the tracking system should include variance analyses to explain the differences between actual and planned expenditures and actual and proposed cost input when such variances would materially affect the overhead rates.

b. If the contractor's budgetary and variance analysis systems are considered to be adequate, the outputs from the system may be acceptable for use in monitoring the contractor's overhead cost expenditure pattern. This is the most economical and efficient method to monitor contractor overhead costs. If the contractor's system is not considered acceptable, the ACO must encourage the contractor to develop an adequate system.

c. Variances of cost elements, where the baseline targets and actual expenditures are out of tolerance by both three percent and $100,000 (plus or minus), should be analyzed in depth by the Government team. Other variance analysis efforts should include tracking of sensitive accounts or ratios which are considered to be significant to the contractor's operations. Analyses include, but are not limited to, manpower reports of actual headcount versus budget, indirect to direct headcount, overhead dollars per direct labor hour, fringe benefits per direct labor hour, input cost for the period, etc.

d. When unjustifiable variances are identified and the contractor has failed to take corrective action, the issue should be referred to the ACO. The ACO should then notify the contractor of the Government's concern over the adverse variances and request explanation and/or corrective action. In the event the contractor fails to take action, the ACO should consider issuing a notice of intent to disallow or not recognize costs (see part 42.801) or direct DCAA to issue a DCAA Form 1 suspending the costs. As advised by the CMS or price/cost analyst the ACO will determine if it is necessary to cancel or amend applicable portions of the FPRA or FPRR.

15.809-6 Reserved

15.809-7 Use of Forward Pricing Rate Information in Final Overhead Settlements. Overhead management includes FPRA or FPRR establishment, cost tracking and final rate settlement (see part 42.7). Government pricing team members who analyze and monitor the contractor's forward pricing and cost tracking activity are responsible for making the results of their analyses available to the administrative contracting officer, and the auditor responsible for the establishment of final overhead rates. ACOs should use advance agreements and/or the notice of intent to disallow cost prescribed by Federal Acquisition Regulation 42.801 to ensure that future year cost avoidances from FPRAs and FPRRs are reflected in final overhead settlements. Comparison should be made between prior contractor forward pricing assumptions and actual experience reflected in recent overhead claims. Results of the comparative analysis may be useful in establishing forward pricing rates and final overhead settlements.

15.810 SHOULD COST REVIEWS

15.810-1 References

a. FAR 15.802, Policy
b. FAR 15.810, Should Cost Analysis
c. DAR 3-801, Basic Policy
d. DAR 1-337, Should Cost

15.810-2 General

a. FAR 15.805-1(a) authorizes the conduct of should cost reviews in instances when it is determined necessary by the procuring activity to convene a formal team of specialists to evaluate a contractor's cost projections, supporting standards, and other in-plant management, operational, and performance practices, on which cost projections are based. Such a team usually includes representatives of the functional elements normally concerned with the acquisition process (e.g., procuring activity, DCAS, DCAA, requiring activity) established for the purpose of evaluating detailed cost and performance data in order to develop the Government's negotiation objective. The team approach merges the review actions such as contract administration, technical input, including audit, into a single coordinated effort.

b. A should cost negotiation objective is defined as one that identifies what it should cost to perform the work if the contractor were reasonably efficient and economical in his methods of operation. Should cost reviews are normally reserved for major sole source or other noncompetitive acquisitions to provide a means for assuring that reasonably efficient and economical methods of operation are in use.

c. When support of should cost reviews conducted by DARCOM is requested, the Memorandum of Understanding (paragraph 15.810-4) should be consulted in addition to the guidance contained herein.

15.810-3 Procedures

a. The support of should cost reviews conducted in contractor facilities under the contract administration cognizance of DCAS is a responsibility of all DCAS functional elements; however, the type and extent of participation may vary from case to case depending upon the support desired by the procuring activity and the capabilities and resources of the DCAS office. As the manager of the DCAS team, the cognizant ACO is responsible for coordinating the efforts of those DCAS elements involved in the particular review.

b. The ACO shall be responsible for the following:

(1) Provide the should cost team with a briefing or information to assist the team in planning the scope and content of the review. In addition, apprise the team of the specialized capabilities available within DLA to review such cost areas as insurance, pensions, employee compensation and overhead.

(2) Advise the should cost team during the course of the review.

(3) Perform or request review and evaluation of subcontractors' price proposals under the conditions set forth in FAR 15-806 and FAR 15.805-5 (j) and (k).

(4) Assist in obtaining inputs or services from DCAS functional elements in those cases when full-time review participants are not provided.

(5) Participate in negotiations when requested by the procuring activity.

(6) Consider the desirability of conducting a postaward orientation conference, particularly when the contract resulting from the should cost review requires the contractor to report progress in achieving management improvements or other long-range objectives.

(7) Coordinate the efforts of the DCAS office in monitoring the contractor's progress under contractually-imposed management improvement or goal achievement programs including the development of a plan for obtaining inputs or analyses of contractor-prepared reports from the appropriate DCAS functional elements. Advise the procuring activity of significant developments.

c. Responsibilities of other DCAS functional elements, i.e., Financial Services, Production, Quality Assurance, and Transportation and Packaging.

(1) Participate in briefings or provide information to assist the should cost team during the review planning stage.

(2) Provide full-time review participants or part-time services or inputs during the course of the review as agreed to by the cognizant DCAS office and the procuring activity.

(3) Participate in negotiations when requested by the procuring activity.

(4) Participate in postaward orientation conferences when requested by the ACO.

(5) Evaluate contractor's progress and provide comments and analyses to or through the ACO of contractor reports submitted under contractual management improvement or goal achievement program in areas related to the particular functional element.

15.810-4 DARCOM/DLA MEMORANDUM OF UNDERSTANDING

The current agreement between DARCOM and DLA on performance of should cost reviews is represented below:

This memorandum of understanding sets forth the agreements reached between the United States Army Materiel Development and Readiness Command (DARCOM) and the Defense Logistics Agency for the conduct of should cost reviews of contractor proposals. Such reviews are designed to result in the analysis of all elements of a contractor's operation by a coordinated team of Government specialists in such fields as manufacturing, engineering, auditing and accounting, estimating, purchasing, and price/cost analysis. These reviews are directed toward identifying inefficiencies and uneconomical practices, thereby enabling the development of a contract negotiation objective based on what contract performance should cost, assuming reasonably achievable economies and efficiencies. Normally, should cost will not be applied to procurements under $10 million, unless Headquarters, DARCOM decides that such an approach is justified by other compelling reasons. For procurements under $10 million, Headquarters, DARCOM will advise DLA of the circumstances, and will invite DLA to provide comments and suggestions before making a final decision to undertake the review. When a should cost review is to be conducted in a contractor's facility under the contract administration cognizance of HQ DLA, DARCOM will provide notification to DLA (DLA-A) as far in advance as possible, but NLT 20 days prior to initiation date of review. DLA in turn will respond accordingly. Subsequent to the initial contact at the headquarters level, direct communication between the DARCOM commodity command and the cognizant DCASR is both authorized and encouraged in order to finalize arrangements for conduct of the should cost review. Following selection of the contractor for a should cost review and during the advance planning stage, the cognizant DCAS office will be responsible for briefing selected members of the should cost team concerning known strengths and weaknesses in the contractor's operation, including the results of systems reviews as well as other factors impacting upon the instant procurement. For should cost reviews conducted in contractors' facilities under DCAS administration, the cognizant DCAS office will provide direct team support to the following minimum extent:

(1) The Administrative Contracting Officer (ACO) assigned to administer the contract will be appointed to the team in an advisory capacity on a part-time basis. The ACO will act as focal point for assistance in obtaining inputs from DCAS functional elements in those cases where full-time participants are not provided. This task includes making delegations to Contract Administration Offices cognizant of major subcontractors for audit and functional review under the conditions set forth in DAR 20-704, when requested by the Team Chief. The ACO, or his designated representative, will also be invited to participate in periodic team briefings during the should cost review.

(2) The full-time services of one highly qualified production or industrial engineer will be provided.

(3) The intermittent part-time services or inputs of other DCAS functional specialists, in such areas as Price/Cost Analysis, Contractor Systems Reviews, Quality Assurance, and Transportation Packaging, will be made available on an as-needed basis providing such services are managed and conducted as a coordinated team effort consistent with normal DCAS policies and procedures.

(4) In addition to providing manpower resources to assist in performance of the should cost review, DCAS participation will be oriented toward providing personnel who, at the conclusion of the study, will be thoroughly familiar with areas for improvement in contractor management and operations and can therefore most effectively monitor and follow up on contractual MIPs.

The DCAS specialist(s) appointed as a should cost team member will enjoy all rights and privileges accorded to other team members and will participate in the contract negotiations when requested. Each appointed DCAS specialist will be responsible for his input in the particular functional area. When the team takes actions or makes recommendations contrary to the advice of the DCAS specialist(s), as would otherwise have come from the DCAS specialist's contribution to a normal pricing review and evaluation, the DCAS specialist(s) may make a full report with recommendations to the should cost team chief. Such report when concurred in by the Head (or his designated representative) of the cognizant DCAS office will then be made a part of the official contract file.

Since a Management Improvement Program (MIP) with potential long-range benefits constitutes a major objective of the should cost analysis, DARCOM will normally incorporate such a program in the resulting contract. The cognizant DCAS office will be afforded the opportunity to comment on the program while in draft form. The DCAS office will monitor the contractor's progress under the MIP to the extent provided for in the contract and/or letter of delegation of contract administration functions.

This agreement may be modified with the mutual consent of the undersigned parties or their authorized representatives.

U.S. ARMY MATERIEL DEVELOPMENT AND READINESS COMMAND	DEFENSE LOGISTICS AGENCY
Name:	Name:
Rank:	Rank:
Commanding	Director

15.811 CONTRACTOR ESTIMATING METHODS REVIEW (CEMRs)

15.811-1 References

a. FAR 15.811, Estimating Systems

b. FAR 15.8, Price Negotiations

c. DFARS 15.811, Estimating Systems

d. DFARS 15.8, Price Negotiations

e. DCAA Manual 7640.1, Chapter IX, Section 9-104, and Appendix J, Estimating System Surveys.

15.811-2 General

a. The cognizant ACO has overall responsibility for assuring that contractors use effective estimating policies, procedures, and methods in developing and submitting proposals for which the ACO has final negotiating responsibility. As manager of the field pricing support team effort, the ACO also has a corollary responsibility for assuring that effective estimating methods are applied in the development of proposals that are to be negotiated by the PCO.

b. To assist the ACO in carrying out these responsibilities, a program for the formal review of the estimating methods used by DoD contractors that do a substantial amount of negotiated business with the DoD has been established. The reviews conducted under this formal CEMR program provide knowledge of the general level of reliability of the contractor's estimates, identify areas requiring special emphasis in the review and evaluation of individual pricing proposals, identify improvements necessary to correct any deficiencies in a contractor's estimating system, and generally disclose the strengths and weaknesses of a contractor's estimating methods and procedures. These reviews often provide contracting officers and members of the pricing team with a useful tool to promote more effective price/cost analysis, perform more effective negotiation, and reduce the time and effort required for review of individual pricing proposals submitted by contractors.

c. DCAA is responsible for conducting reviews of selected contractors' estimating systems. In conducting such reviews, the team approach is used for contractors selected by the cognizant Regional Audit Office. The cognizant DCAA audit office designates an auditor as CEMR team leader. The team leader is responsible for survey planning, direction of work, and the preparation and distribution of the survey reports. In accordance with DCAA procedures, the contractor will be given a copy of the draft report, which has been coordinated with the ACO, and requested to respond to the recommendations. After receipt of the contractor's comments, an exit meeting is to be held with the contractor and then the final report issued, which will identify those recommendations that the contractor did not agree with. If the contractor fails to respond to the recommendations in a reasonable period of time, the exit meeting will be held and the contractor's reaction at the exit conference to the recommendations will be included in the final report. After the final report is issued, the ACO is responsible for follow-up of those recommendations not agreed to by the contractor, some of which may require follow-up in accordance with Part 90.01 (refer to 15.811-2h). Within six months after issuance of the final report, the auditor will issue a supplemental report commenting on the contractor's implementation of the recommendations.

d. DCAA has established two types of CEMR reviews, as follows:

(1) *Initial Survey.* A comprehensive review of a contractor's estimating system accomplished as a joint DCAA and DCAS team effort.

(2) *Succeeding Periodic Surveys.* A review initiated by the contract auditor whenever the contractor has a significant organization change, a breakdown in procedures or controls, or major deficiencies where no corrective action has been taken and where the auditor otherwise determines that a review is necessary. These periodic reviews are called "follow-up," "supplemental," "interim," or "advisory" reviews.

NOTE: All audit request for DCAS team-member participation in these types of surveys are to be submitted to the cognizant ACO.

e. CAOs are responsible for supporting the CEMR program to the extent required by DFARS 15.811.

f. The Financial Services element of the CAO is responsible for providing the administrative support to the ACO. Upon receipt of a request from DCAA to participate in a CEMR, the ACO will forward the request to the Financial Services element of the CAO. The Financial Services element will assign a price/cost analyst to provide the administrative support to the ACO, including the following:

(1) Maintain routine coordination with cognizant DCAA office and/or team leader.

(2) Request necessary technical support from the various DCAS functional specialities. Obtain assistance of the ACO if necessary to resolve any schedule problems. If necessary, the ACO may require the assistance of the Head of the CAO in resolving scheduling problems.

(3) Participate in the CEMR as a team member.

(4) Maintain a control file of review schedules, work papers, and technical reports forwarded to the team leader.

(5) Participate in entrance and exit interviews with the contractor.

(6) Keep the ACO apprised of the review effort and results.

(7) Assure that copies of the CEMR report received from the ACO are:

(a) Circulated to other price/cost analysts within the CAO.

(b) Submitted to the Chief of the Financial Services Division at the DCASR.

(c) Filed in the contractor central file.

(8) Assist the ACO in resolving those recommendations in the final CEMR report that the contractor did not agree to implement (refer to 15.811-2c).

g. Where the contractor's volume of Government business does not warrant a formal review, and where the contractor's CEMR history indicates acceptable or minor estimating deficiencies, the auditor will review the contractor's estimating procedures as an integral part of the audit. A copy of such reports including corrective action required, should be furnished the cognizant ACO.

h. Estimating system surveys are subject to audit follow-up requirements in 90.01 if the report addresses improper practices, or the audit recommendation involves an issue that may have a significant impact on acquisition procedures or policy.

15.811-3 Survey Procedures

a. DCAA annually (prior to the beginning of the fiscal year) develops a schedule of surveys to be performed during the next fiscal year. ACOs desiring a review to be performed at a contractor under their cognizance should submit a request for the review prior to the end of a fiscal year to the cognizant DCAA auditor, recognizing that that DCAA program manager has the final determination of contractors to be reviewed during the fiscal year. For workload planning purposes, at the beginning of the fiscal year DCAA will advise the ACOs of the contractors under their cognizance selected for review during the year.

b. Approximately 60 days prior to the scheduled starting date of the survey, the team leader will advise the ACO of the starting date and request CAO participation. The ACO will arrange to have a price/cost analyst serve as the ACO's representative to discuss with the auditor such aspects as personnel and technical requirements, scope of the survey, time-phasing the in-plant performance, and the entrance conference with the contractor. In developing the scope of the review program, areas of special interest to the CAO may be suggested for inclusion in the survey to assist in pricing spare parts or contract changes, and in resolving other pricing problems being encountered.

c. During the in-plant portion of the survey, the price/cost analyst will participate in all meetings with the contractor and the entrance and exit conferences. All team members will adhere to professional standards with respect to preparing adequate working papers to document findings and conclusions. The reports prepared by the DCAS technical specialists will be reviewed by the price/cost analyst to assure technical sufficiency. The team members will retain the detailed working papers prepared by them in accomplishing their part of the review until the CEMR is completed. After the field work is completed the team will meet to review all findings and recommendations and generally establish the content of the CEMR report. Copies of the technical specialists' working papers should be provided upon request of the team leader. Upon issuance of the draft CEMR report by the auditor, copies of the technicians' reports to the auditor will be forwarded to the price/cost analyst for retention in the central file.

d. The auditor will furnish the ACO a copy of the draft report and the proposed letter to the contractor for review and comment. After coordinating with the ACO and resolving any differences in conclusions or recommendations, the auditor will furnish the contractor a copy of the draft report and request comments be provided on conditions requiring corrective action and on the report recommendations. Upon receipt of the contractor's comments, the auditor will furnish the ACO a copy of the draft report, the transmittal letter to the contractor, and the contractor's reply.

e. After receipt of the contractor's reply, the auditor will arrange for and conduct an exit conference with the contractor. The auditor acts as chairman in the conference. The ACO should be advised of the conference, but is not responsible for the review and does not chair the exit conference. Attendance at the exit conference is at the discretion of the ACO. However, the price/cost analyst will participate in the exit conference to assure that the DCAS is knowledgeable of the contractor's position relative to each of the recommendations made, and that all recommendations considered of importance are discussed with the contractor.

f. The auditor will distribute the final CEMR report to the contractor, the appropriate purchasing offices, and the cognizant ACO. The ACO will retain one copy and forward the rest (3) to the price/cost analyst for further distribution in accordance with paragraph 15.811-2(f)(7). The price/cost analyst will review the final report to determine whether any further action is required. The Chief, Financial Services Division, at the DCASR will assure that the other specialists in the Division, such as systems analysts, are aware of the conclusions and recommendations.

15.811-4 Surveillance Procedures. The auditor, ACO, price/cost analyst and technical specialists who participated in the survey have a continuing responsibility to monitor the contractor's implementation of corrective action. In addition, CAO representative should notify the auditor of any additional estimating systems deficiencies identified in their daily activities.

16 TYPE AND KIND OF CONTRACTS

16-1 References

a. FAR 16, Types of Contracts.

b. DFARS 16, Types of Contracts.

c. DFARS 53.270, Use of Forms.

d. DoD 4105.63-M, Military Standard Contract Administration Procedures Appendices A7 and A8.

e. DLAM 7000.1, Accounting and Finance Manual.

16-2 General

a. DFARS 53.270 requires that the type of contract shall be identified on all contracts by inserting an alpha code in the title block. These alpha codes are identified and described in 16-3 below.

b. For the purpose of tailoring MILSCAP abstracts, the below-listed alpha codes will be used. In editing an abstract, the type of contract code used will be the code which best describes the predominant pricing provisions of the contract. Whenever the codes are not provided by the activity who prepared the contractual instrument, Comptroller will determine the code for the MILSCAP abstract from those described in figure 5-52 of DLAM 7000.1.

16-3 Procedures

a. The following alpha codes, as set forth in DoD 4105.63-M, will be used to indicate the type of contract.

Type Code	Explanation and References
A	*Fixed-Price Redetermination, Type A* *FAR 16-205, 16.5, (Indef. Delivery), 16.502 (Def. Quant).*
B	*Fixed-Price Redetermination, Type E* *FAR 16.206, FAR 16.5 (Ind. Del.), 16.502 (Def Quant).*
C	*Fixed-Price Redetermination—Other If not A or B use C.*
J	*Firm Fixed-Price* *FAR 16.202 with 16.5 (Ind. Del.) or FAR 16.502 (Def. Quant), 16.503 (Req. Cont.), 16.504 (Ind. Quant), 16.506 (Orders).*
K	*Fixed-Price with Economic Price Adjustment* *FAR 16.203, 16.5 (Ind. Del.).*
L	*Fixed-Price Incentive (with performance incentive)* *FAR 16.403, 16.401(a).*
M	*Fixed-Price (without performance incentive)* *FAR 16.403.*
R	*Cost Plus Award Fee* *FAR 16.305, 16.404-2.*
S	*Cost* *FAR 16.302.*
T	*Cost-Sharing* *FAR 16.303.*
U	*Cost-Plus Fixed Fee* *FAR 16.306.*
V	*Cost-Plus-Incentive (with performance incentive)* *FAR 16.304, 16.404.1.*
W	*Cost-Plus-Incentive Fee (without performance incentive)* *FAR 16.304, 16.404-1.*
Y	*Time and Materials* *FAR 16.601.*
Z	*Labor—Hour* *FAR 16.602.*
O	*Basic Order Agreements or Blanket Purchase Agreements* *FAR 16.703.*
	Letter Contract will be definitized at a later date. Use type code for contract as contemplated by letter contract.

NOTE: Type 0 is currently a MOCAS requirement and not a MILSCAP requirement. DBMS leave blank.

b. The various kinds of contracts are described in DoD 4000.25-5-M. For the purpose of tailoring MILSCAP abstracts, the following numeric codes, as set forth in DoD 4000.25-5-M will be used to indicate the kind of contract.

Kind Code	Explanation and References
1	*Supply contracts and orders*
2	*Research and development contracts*
3	*System acquisition contracts*
4	*Not used by MILSCAP*
5	*Maintenance contracts*
6	*Service contracts*
7	*Facilities contracts*
8	*Undefinitized letter contracts*
9	*Unpriced orders against BOA*
0	*Other*

c. Contracts received for administration which are not covered by the codes in paragraphs a and b above, e.g., lease or storage agreements, shall be input into the system using kind code 0 and the type code from the title block of the contract. A non-cost storage type contract could be coded 0S or 0A depending on the type of contract inserted in the title block of the contract.

16.104 CONTRACTOR'S ACCOUNTING SYSTEM REVIEW

16.104-1 References

a. FAR 16.104(h), Adequacy of the Contractor's Accounting System.

b. FAR 32.503-3, Initiation of Progress Payments and Review of Accounting System.

c. DFARS 15.805-1(a)(72).

d. DAR 3-402(a)(5), Adequacy of the Contractor's Accounting System.

e. DAR 3-809(c)(3), Audit Responsibilities for Preaward Surveys and Reviews.

f. DAR E-506, Accounting System and Controls.

g. DLAM 8300.1, Production Manual for Contract Administration Services, Section 1-102m, Reimbursable PAS.

16.104-2 General

a. An accounting system review is required when the contract is cost-type, fixed-price redeterminable, or fixed-price with progress payments. Request for reviews of contractor's accounting system will be made by the ACO to the auditor through the Financial Services element. (See 16.104-4 for accounting system reviews requested in conjunction with preaward surveys.) The auditor will be responsible for reviewing a contractor's accounting system and for reporting to the ACO, stating an opinion as to the acceptability of the system or deficiencies noted. The audit reviews may be conducted either on a continuous basis at major contractors or on a request basis. The ACO will request the contractor to make necessary accounting system changes when required. Accounting system audit reviews will assist the ACO in determining the allocability and reasonableness of costs incurred. Formal written approval of a contractor's accounting system will not be made since the approval might jeopardize the Government's legal position when contract costs are in dispute. The ACO will advise the predominant procuring activities of the acceptability of the contractor's accounting system, as deemed necessary.

b. The specialized skills of the contract auditor will be used in conducting accounting system reviews. The ACO has the responsibility for final decisions as to allowability and allocability of costs, as well as the determination as to the acceptability of the contractor's accounting system. See 90-01 for audit followup requirements pertaining to accounting system reviews performed by DCAA.

c. When a contractor is governed by the CAS clause, the procedures for administering this program (CAS) take precedence (see Part 30).

16.104-3 Procedures

a. Upon receipt of a cost-reimbursement type contract, or within 60 days after receipt of a contract requiring later repricing, the ACO will request an opinion from the auditor regarding the acceptability of the contractor's accounting system (see paragraph 32.592-3(b) for accounting system review relative to progress payments). The formal request may be waived if a report has been obtained within the previous 6 months on a similar type contract, or the contractor is under continuous audit by the auditor.

b. When the contract auditor's accounting system review discloses that deficiencies exist in the contractor's accounting system, the ACO will formally request the contractor to correct the deficiencies. The contractor should be requested to respond to the letter within a reasonable length of time and to identify the corrective action taken concerning the accounting system. Prior to issuing the letter, it will be coordinated with Audit.

c. The ACO normally shall invite the contract auditor to attend all meetings with the contractor which deal with accounting matters. Contractors will be requested to submit to the ACO descriptions of proposed major accounting system changes prior to their effective date, with a copy to the contract auditor. The contract auditor will be requested by the ACO to review proposed major accounting system changes to determine if the changes are in accordance with generally accepted accounting principles and practices appropriate to the particular circumstances. Accounting system changes which materially affect the costs of individual contracts will be reported to the ACO by the auditor. If, during routine audit reviews, the auditor notes that significant accounting system changes have been implemented without prior notification to the ACO, the Auditor will advise the ACO of such changes and will report their impact on current and future contracts. The ACO will promptly notify the affected procuring activities of accounting system changes when they materially affect contract costs.

d. All information relative to the contractors accounting system will be kept in the Supplier's Miscellaneous File, including any statements from the contract auditor regarding the adequacy of the accounting system.

16.104-4 Preaward Survey Procedures. The cognizant contract auditor is responsible for conducting the accounting system review requested in conjunction with a PAS. SF 1408 Preaward Survey of Prospective Contractor Accounting System is provided for this purpose. Requests for accounting system reviews made in connection with SF 1408 will be processed on behalf of the Preaward Monitor by the Financial or Price/Cost Analyst. Prior to requesting audit assistance, the Analyst should review the Supplier's Miscellaneous File or other records to determine if a current SF 1408 (less than 1 year) is available. If so, it may provide sufficient information to obviate the need for going to DCAA. Where a current SF 1408 exists and is still considered valid, the Analyst will forward a copy to the Preaward Monitor along with a statement that such report remains valid for the current procurement. If a current SF 1408 is not available, the Analyst will request that the Auditor conduct a survey and complete an SF 1408. The Analyst will indicate in the letter to the Auditor whenever the request involves a reimbursable review, and will transmit the following information provided by the PAS Monitor in accordance with DLAM 8300.1, paragraph 1-102m(1):

a. For reviews requested through the DoD Central Control Point by foreign governments and NATO offices, attach a copy of DLA Form 929, Request for Contract Administration Services, and associated documentation which indicates that the requester has agreed to reimburse the U.S. Government for services performed.

b. For PAS reviews involving both DoD and FMS requirements, attach information which indicates the foreign government's intention to reimburse the U.S. Government for the requested services, including a billing address.

c. For requests covering FMS items not processed through the DoD Central Control Point, provide documentation that the Military Department sponsoring the FMS will pay for the services, including a billing address.

d. For requests from civilian agencies, attach a copy of the agency's request for analysis. Upon completion of the review, the Analyst will forward the completed SF 1408 to the PAS Monitor and provide a copy to the ACO.

If the necessary documentation is not provided in situations a, b, c or d above, the financial or price/cost analyst will so advise the PAS Monitor who is responsible for obtaining the needed information from the original requester.

16.203 ECONOMIC PRICE ADJUSTMENTS (EPA)

16.203-1 References

a. FAR 16.203, Fixed-Price Contracts with Economic Price Adjustment.

b. FAR 52.216-2, Economic Price Adjustment—Standard Supplies.

c. FAR 52.216-3, Economic Price Adjustment—Semistandard Supplies.

d. FAR 52.216-4, Economic Price Adjustment—Labor and Material.

e. DFARS 16.203-4, Contract Clauses.

f. DFARS 16.203-70, Fixed-Price Contracts with Economic Price Adjustment.

16.203-2 General. The purpose of EPA clauses is to protect the contractor and the Government against significant economic fluctuations during the period of contract performance. Administration of a contract(s) containing EPA provisions requires an understanding of why the clause has been included in the contract and how it is intended to operate. Thus, ACO/PCO coordination on EPA matters is essential.

16.203-3 Procedures

a. There are two circumstances when an EPA evaluation is required: when a contractor submits an EPA proposal, and when verifying at contract completion a contractor's certification that all price decreases have been applied.

b. As indicated in the references both the contract clause and the price adjustment provisions vary from contract to contract. Therefore, the method used to evaluate an EPA will also vary on a case-by-case basis. Prior to evaluating a contractor's EPA proposal or in verifying a contractor's certification, the contract clause should be reviewed to determine the provisions upon which the evaluation will be based. Generally, EPA provisions are of three types: adjustments based on established price—market or catalog (clauses in DFARS 52.216-7000 and FAR 52.216-3) or standard supplies (clause at FAR 52.216-2) and semistandard supplies (clause at FAR 52.216-3); adjustments based on labor or material costs—actual cost method (clause in FAR 52.216-4; adjustments based on labor or material costs—cost index method (no standard FAR clause). Data to support the adjustments noted above should normally be available from the contractor, that is, the data used by the contractor to support the proposal or certification. (See subparagraph a). EPA adjustments under the actual cost method clause in FAR 52.216-4, labor adjustments under the clause in DFARS 52.216-7001 and steel price adjustments when based on actual costs pursuant to Note 8 of the clause in DFARS 52.216-7001, are subject to the Public Law 87-653 requirements for submission and certification of cost or pricing data. Conversely EPA adjustments under the other "established price" clauses (DFARS 52.216-7000, FAR 52.216-2 and 52.216-3) are exempted by FAR 15.804-3(c). (See also standard or semistandard supply clauses at FAR 52.216-2 & -3) and FAR 15.804-3(c) from the data submission and certification requirements. With respect to nonstandard clauses utilizing the cost index method, Public Law 87-653 does not apply if the adjustment is based solely on the application of Government-developed indices to specific factors or amounts included in the contract. When the contractor's supporting data for the adjustment is actual cost, Financial Services evaluation will most likely be necessary. The contractor should be relied upon to request changes in the contract price when they are necessary. For upward adjustments the contractor should be encouraged to submit fully supported proposals. This will assist the ACO, price/cost analyst, or auditor in evaluation of the proposal to arrive at a reasonable negotiation position. It is equally important that downward adjustment proposals be fully documented, but in this situation it may be more difficult to obtain and may require input to the ACO from Comptroller, Financial Services, etc.

c. While it is Comptroller's responsibility to verify that certification has been received before final payment is made to the contractor, it is the ACO's responsibility to assure that such certifications (see subparagraph a) are valid. It is recommended that ACOs (in conjunction with Comptroller and the Financial Services Branch) review and verify a random sample of contractor certifications to assure compliance with the EPA clause (possible increases and decreases to contract price). In selecting contracts for verification, it is recommended consideration be given to contracts having an extended period of performance, contracts with a high volume of a single commodity, and a product or commodity that historically has experienced a fluctuation or downward market trend from time to time as in the case of copper base products.

16.4 ADMINISTRATION OF INCENTIVE AND REDETERMINABLE CONTRACTS

16.4-1 References

a. FAR 16.4, Incentive Contracts.

b. FAR 16.205, Fixed-Price Contracts with Prospective Price Redetermination.

c. FAR 16.206, Fixed-Price Contracts with Retroactive Price Redetermination.

d. DFARS 16.206, Fixed-Ceiling Price Contracts with Retroactive Price Redetermination.

e. DFARS 16.4, Incentive Contracts

f. DFARS 16.404-1, Cost-Plus Incentive Fee Contracts.

16.4-2 General. Incentive and redeterminable contracts are intended to ensure, where there has not been adequate competition between offerors or where the work to be performed cannot be completely specified by the Government, that outstandingly effective contractor performance (i.e., control of cost, superior performance of product or service, or time of delivery, or any combination thereof) is met with high profit, mediocre performance with mediocre profit, and poor performance with low or no profit or even a loss. Incentive contracts utilize one or more negotiated "sharing" formulae embodied in the contract to achieve that purpose; while, with redeterminable contracts, the purpose is achieved by giving consideration, in establishing a profit objective at the time or times specified for the redetermination of price, to the contractor's quality of performance under the contract.

16.4-3 Policy

a. Post Award Orientation Conference. PAOCs are recommended for incentive and redeterminable contracts to, among other reasons, ensure that all parties recognize and understand the specific requirements of the incentive or price redetermination clauses of the contract, including the requirements and schedule for the submission of contractor-prepared reports, such as the Quarterly Limitation on Payments statement, and others as may be required. (see also section 1-1800.)

b. Primary Incentive or Incentives. For FPI and CPIF contracts, the manner in which the incentive or incentives have been structured and/or combined is of particular significance in the administration of those contracts. The contract and the negotiation memorandum should both be carefully studied by the ACO. That study will help identify to the ACO the incentive features of the contract that are of the greatest importance to the buying activity. Additionally, it may be extremely helpful for the ACO to discuss the incentive features with the PCO.

c. Monitoring of Contract Status. ACOs should keep themselves continuously advised of the status of incentive and redeterminable contracts through such means as thorough and regular reviews of contractor-prepared progress reports (e.g., CPR, CFSR, C/SSR, etc.), ongoing consultation with Production and Audit personnel, and advisories from Quality Assurance.

(1) During his reviews of the status of FPI and CPIF contracts, the ACO should be particularly alert to developments or events that may cause the contract's incentive features to lose their effectiveness in motivating superior performance by the contractor. For example, the contractor might have experienced an overall decline in his business, resulting perhaps from the termination of one or more major contracts. In that case, the base upon which overhead costs can be distributed will have been reduced, which will result in an increase of the stated costs of the remaining contracts (they have to absorb a larger portion of the overhead costs). The incentives for control of cost, therefore, will tend to lose their effectiveness, since much of the additional profit the contractor could have earned will have already disappeared because of the increase in stated overhead costs.

(2) Also, at times incentive features may inadvertently motivate the contractor to perform in a manner inconsistent with the best interests of the Government. Such situations arise most frequently where delivery incentives are involved. For example, the contractor may make deliveries far earlier than originally anticipated, thereby causing the Government to incur unforeseen storage costs.

d. Remedial Actions. In those situations where the incentive features of the contract have lost their effectiveness or are inadvertently motivating the contractor to perform in an adverse manner, it must be recognized that the contractor has the prerogative of choosing the manner or method of performing under the contract; and, further, choosing which area, or incentive feature, to devote the greatest effort to.

(1) Accordingly, the remedial actions available to the Government are somewhat limited, and consist mainly of the following:

(a) Clarifying discussions with the contractor, preferably in concert with the PCO.

(b) Modification of the contract.

(2) Primary responsibility for deciding upon the appropriate course of remedial action rests with the PCO. The ACO's primary responsibility is to provide the PCO with timely and full assessments of the situation and meaningful recommendations as events develop.

e. Residual Material. In many cases, the contractor will propose that the Government acquire the residual material resulting from the contract. As a general rule, the Government does not desire to acquire residual material. Accordingly, the contractor's final proposal must be analyzed and appropriately adjusted for:

(1) Whether the quantities proposed are in excess of the normal, acceptable scrap allowance, and/or normal practice of that industry.

(2) Whether that residual material, or a portion thereof, can be used on another existing contract, or for the contractor's commercial products.

(3) Whether the remaining costs are allowable, allocable, and reasonable.

16.4-4 Procedures for FPI and FPR Contracts

a. Quarterly Limitation on Payments Statements. The Incentive Price Revision (see FAR 52.216-16 and 52.216-17) and Price Redetermination (see FAR 52.216-05 and 52.216-06) clauses all contain a paragraph entitled "Limitation on Payments." That paragraph requires the contractor to submit a Quarterly Limitations on Payments statement. The statement is intended to provide a means of determining whether excess payments have been made to the contractor prior to negotiation of the final contract price, i.e., that the contract billing prices should be reduced (see subparagraph e below).

(1) Due Dates for the Statement. The "Limitation on Payments" paragraph stipulates that the statement is to be submitted within 45 days after the end of each quarter of the contractor's fiscal year. The quarterly statements are to begin with the quarter in which delivery is first made (or services first performed) and accepted, and are to continue until negotiation of the final contract price.

(2) Establishing Suspense Dates. On receipt of an FPI or FPR contract, the Comptroller is responsible for initial input of R9 Standard Coded Remark 18 (see Part A-600 of this manual). (Under MOCAS 1B, the ACO must manually enter R9 Remark 18.) The ACO is responsible for assuring input of that remark, and for revising the due date in that remark as appropriate. Presence of that R9 remark will cause the automatic generation of quarterly alerts to the ACO to help ensure timely receipt of the statement.

b. Non-Submission of the Quarterly Limitation on Payments Statements. When the quarterly statement has not been submitted by the due date, the ACO is to immediately notify the contractor that further payment on the contract will be suspended until the statement (and refund, if appropriate) is received.

c. Review of the Quarterly Limitations on Payments Statements. ACOs are to review the statements for compliance with requirements of the "Limitation on Payments" paragraph, and should verify the accuracy of the data in the statements by periodically comparing that data with data from the contractor's requests for progress payments and by requesting the services of price analysts and/or audit personnel, as appropriate.

d. Collection of Refunds. The clauses Incentive and Price Revision and Price Redetermination require the contractor to immediately make a refund, or credit the Government against existing unpaid invoices or vouchers, when the statement indicates overpayment has been made. If the contractor has not forwarded a refund (or made provisions for credit) with his statement, the ACO is to promptly initiate a demand letter to the contractor in accordance with FAR/DFARS 32.606 and 32.610. (See also DLAM 7000.1, Chapter 12.) Collection of the debt will not be delayed pending adjustment of billing prices. Further, the practice of adjusting future billing prices to offset a currently existing debt/overpayment is not permissible since such action constitutes a debt referral, which may be granted only by the departmental Contract Financing Office (see FAR/DFARS 32.613).

e. Adjustment of Billing Prices. The DAR provides for the adjustment of billing prices whenever it becomes apparent that the costs associated with the contract will be either greater or lower than originally anticipated. The adjustment is accomplished by negotiation with the contractor. During reviews of the Quarterly Limitation on Payment Statements, the ACO should be alert to the possible desirability of adjusting the billing prices. (For instance, the contractor may have been having to make refunds with each of the last several statements.) The ACO should submit appropriate recommendations to the PCO as developments warrant.

f. Submission of Final Contract Price Revision Proposal. At least 90 days prior to the effective due date for submission of the final contract price revision proposal, the ACO is to notify the contractor of his obligation to submit the proposal. If the contractor is late in submitting the proposal, the ACO is to send a followup letter to the contractor with a copy to the PCO. In the event that the contractor still does not submit a final proposal, the PCO is to be asked to intercede.

g. Review of the Final Proposal. The ACO will first review the final proposal to determine if an overpayment has been made. The proposal will then be referred to the Financial Services element for review and evaluation pursuant to Part 15.805. If at any time before, during, or after the Financial Services review it is determined that overpayment has been made, a demand letter will be immediately sent by the ACO in accordance with FAR/DFARS 32.606 and 32.610.

16.4-5 Procedures for CPIF Contracts. The ACO will perform surveillance on contract funding in accordance with Parts 32.7 and 90.06. When the contractor's performance or cost incurred indicates that the target fee will not be achieved, the ACO will make an appropriate adjustment in the payment of fee in accordance with the "Allowable Cost, Incentive Fee, and Payment" clause of the contract.

16.601 TIME AND MATERIALS CONTRACTS

16.601-1 References

a. FAR 16.601, Time-and-Materials Contracts.

b. FAR 16.602, Labor-hour contract.

c. FAR 52.232-7, Payments under Time-and-Materials and Labor-Hours Contracts.

d. DFARS 16.601, Time-and-Materials Contracts.

16.601-2 General

a. This Part describes the procedures to be used in the administration of Time and Materials contracts. It also implicitly covers the procedures to be used in the administration of Labor-Hour contracts, the two types of contracts differing only in that under Labor-Hour contracts, materials are not supplied, and are therefore not charged, by the contractor.

b. These contracts do not encourage effective cost control by the contractor. Also, the manner in which the contractor is compensated leaves the Government susceptible to being mischarged. Accordingly, it is imperative that the Contract Administration team develop a coordinated action and surveillance plan to ensure proper control of costs.

16.601-3 Procedures

a. Either in connection with preparation for a Post Award Orientation Conference (strongly recommended for these contracts) or by separate action, the ACO as team leader should as soon as possible convene a meeting of all the functional specialists, including DCAA auditors, who will be involved in the surveillance of contract performance.

b. The purpose of that meeting will be to develop a coordinated plan establishing the action and surveillance responsibility for each team member. That plan is to be reduced to writing, with all assigned team members coordinating thereon. Copies will be provided to each team member; the original will be placed in the official contract file. This will ensure that each team member is cognizant of his or her own role, as well as the roles and responsibilities of the other team members. These plans need not necessarily be prepared for each and every T&M contract; "master plans" may be developed for groups of contracts of similar characteristics under administration at the same contractor facility.

c. At a minimum, the plan will provide for:

(1) A determination of the adequacy of the contractor's accounting system to accurately identify and record costs incurred under the contract and to provide a basis for the auditing thereof.

(2) Surveillance of the contractor's plant operations to ensure that the direct labor and direct materials being charged to the contract are allowable, allocable, and reasonable. This part of the plan will necessarily entail close coordination and cooperation between all the Government technical specialists concerned. It must provide for periodic floor checks by the Industrial Specialist and/or the Engineer, assisted by the QAR whenever appropriate. These floor checks are to ascertain the necessity for (via technical analysis of the contractor's work methods), and the quantities and types of direct material and direct labor actually being used.

(a) Periodic floor checks are the primary means by which the Government detects whether or not it is being inappropriately charged. For instance, the contractor may be billing the Government for the time of a "Senior Engineer" when in fact a "Mid-level Technician" is physically performing the work. This mischarging of time is most easily discovered during a floor check, either by checking time cards or simple visual observation on the plant floor.

(b) It should be noted that DCAA does not routinely perform floor checks on an individual contract (their emphasis is upon surveillance of the contractor as a total entity), but their assistance is available on an as-requested basis. That assistance can be extremely valuable when trying to ascertain exactly which "cost codes" the contractor is using to bill Government work to, and/or when trying to confirm the presence or extent of mischarging.

(3) Periodic audits of the contractor's billings under the contract. Such audits may be coordinated with a periodic floor check.

(4) Ensuring full and complete communication with the ACO and other team members on the status of surveillance efforts. Particular stress must be laid on the importance of alerting the ACO immediately to any possible problems.

d. The ACO must take action to ensure that the five percent withholding (up to a maximum of $50,000) of monies from the contractor's billings is effected, as stipulated by reference c, pending the delivery of the contractor's release. The ACO should also be aware that in some cases, the withholding percentage may vary from the standard five percent called for in reference c, since this clause permits the PCO latitude to adjust the withholding percentage. For T&M orders placed under BOAs or Indefinite-Delivery Type Contracts, the withholding provisions of reference c should be applied per individual order, not to the aggregate total of all T&M orders issued under the basic instrument.

16.603 LETTER CONTRACT ADMINISTRATION

16.603-1 References

a. FAR 16.603, Letter Contracts.

b. FAR 52.216-23, Execution and Commencement of Work.

c. FAR 52.216-24, Limitation of Govt Liability.

d. FAR 52.216-25, Contract Definitization.

e. FAR 52.216-26, Payments of Allowable Costs Before Definitization.

f. FAR 32.502-4(c), Contract Clauses.

g. FAR 52.232-16(j)(8), ALT II Progress Payments.

h. DFARS 16-1603, Letter Contracts.

i. DAR E-515, Letter Contracts.

j. DAR E-516, Provisional Delivery Payments.

16.603-2 General

a. Letter contracts are included in the basic definition of procurement documents, and as such will be reviewed, recorded, distributed, maintained, filed and otherwise treated administratively as any other procurement document received in the CAO.

b. The definitive contract superseding a letter contract will be treated administratively as a contract modification. The superseded letter contract will be retained as a part of the official file.

16.603-3 Procedures

a. The contractor's compliance with the definitization schedule and other special terms of the letter contract will be closely monitored by the ACO and delays or anticipated delays will be reported immediately to the purchasing office.

b. Controls will be established identifying the actions and dates in the definitization clause of the letter contract. Followup action will be taken when intermediate dates are not met as well as the definitization date. Contractor expenditures and percentage of completion of supplies or services will be monitored. Action will be taken to prevent exceeding the limitation set forth in the definitization clause.

c. To ensure compliance with the limitations established in the contract, reviews and controls required for administration of cost-type contracts will be established regardless of the type of definitive contract which may be contemplated. Such financial controls are necessary to assure that cost data and approvals are obtained by the contractor in anticipation of a possible cost-type definitive contract and to facilitate settlement in the event of termination prior to definitization.

d. Immediately upon receipt of the contractor's proposal, the ACO will advise the PCO by telephone and request instructions as to:

(1) Whether a review and evaluation by the ACO will be required.

(2) Any special review requirements or areas to be emphasized in the review.

(3) Whether copies of the proposal are to be furnished immediately to the PCO or are to be submitted with the final pricing report.

(4) The date on which the final pricing report is due.

After coordination with the PCO has been completed and it is determined that a review and evaluation of the proposal is required, the ACO will submit the proposal to the Financial Services element for processing in accordance with section 15.805.

16.703 ADMINISTRATION OF BASIC ORDERING AGREEMENTS AND INDEFINITE DELIVERY TYPE CONTRACTS

16.703-1 References

a. FAR 16.5, Indefinite-Delivery Contracts.

b. FAR 16.703, Basic Ordering Agreements.

c. FAR 53.2, Prescription of Forms.

d. DFARS 16.5, Indefinite-Delivery Contracts.

e. DFARS 16.703, Basic Ordering Agreements.

f. DFARS 53.2, Use of Forms.

g. DAR 3-409, Indefinite Delivery Type Contracts.

h. DAR 3-410.2, Basic Ordering Agreement.

i. DAR 3-608.6, Use of DD Form 1155 Order for Supplies or Services as a Delivery Order.

16.703-2 Scope. This part sets forth procedures for administering BOAs and indefinite delivery type contracts. This part does not pertain to maintenance, overhaul, modification, or repair work unless the particular contractual vehicle being used is a BOA. Procedures pertaining to contracts for the aforementioned work are covered in part 90.03.

16.703-3 General

a. DD Form 1155, Order for Supplies or Services or Standard Form 26, Award/Contract, shall be used to order supplies or services under BOAs. Orders under indefinite delivery type contracts shall be placed on DD Form 1155 only, unless the PCO elects to place an order by means of written telecommunications media in accordance with FAR 16.506(c). Optional Form 347, Order for Supplies or Services, may be used for orders under non-DoD indefinite delivery type contracts or BOAs (see FAR 53.216-1 and DFARS 13.505-2). Orders may contain a price established by the PCO or ACO or may be subject to later negotiation of a price. For the purposes of this manual, the terms defined below will apply:

(1) *Priced Order.* An order which is issued in definitized form by either the PCO or ACO.

(2) *Unpriced Order.* An order which must be negotiated and definitized by the PCO or ACO.

b. In all cases, Standard Form 30, Amendment of Solicitation/Modification of Contract, shall be used to definitize unpriced orders (see FAR 53.243(b) and DFARS 53.2).

16.703-4 Actions to be Taken by the ACO and Other Functional Areas Concerned Upon Receipt of BOAs, Contracts, or Individual Orders for Administration

a. The scope of work should be fully understood. Also, the contracts/BOAs, must be examined for such provisions and requirements as set forth below:

(1) Organizations authorized to issue orders.

(2) Conditions under which orders may be issued by the ACO.

(3) Fund limitations (see subparagraph c(1)).

(4) Termination date for issuance of orders.

(5) Pricing provisions including "most favored customer" provisions (see paragraph 15.805-8c. Upon receipt of a BOA, BPA or contract containing a "most favored customer" provision, the ACO will advise the Financial Services element and request that a sampling plan be established to test the contractor's compliance with the "most favored customer" provision (see paragraph 15.805-3c(1). If a sampling plan already exists for the contractor, the ACO will request the Financial Services element to update the current plan to include the new BOA, BPA or contract.

(6) Period allowed for submittal of contractor proposals, usually stated in terms of number of days from date or receipt of order, or prior to stated percentage of work completed under the order.

(7) Point when contractor may start performance on the orders. In some cases, the contractor may be authorized to start performing prior to definitization of the orders.

(8) Existence of STE Clause, DAR 7-104.26 or FAR 52.245-18 and Special Tooling Clause DAR 7-104.25 or FAR 52.245-17.

b. ACOs shall assure that DCAS personnel and contractor personnel have common understandings as to the scope of the agreement, contract, or order and provisions and requirements, such as discussed in subparagraph a above. Some form of postaward orientation, as set forth in Part 42.5 can be most helpful in preventing delays in implementing production plans.

c. ACOs shall monitor:

(1) *Overall Fund Status*

(a) Total funds committed (under no circumstances will orders be issued by the ACO which exceed the total funds committed under a contract or line item).

(b) Dollar values of individual orders which may be placed by the ACO.

(c) Limitations on Government's obligation. Each unpriced order must contain a monetary limitation on the obligation of the Government. Additional funds required under individual orders must be committed prior to execution by the contractor and the ACO of contractual documents establishing firm prices for the orders.

(d) Coordination with the comptroller to assure that the obligated amount shown by this latter office is in agreement with the records maintained by the ACO. Information is contained in the the comptroller contract support detail file.

(e) As orders are placed against BOAs which are bulk funded, the ACO will be alerted for possible excess or insufficient funds and take appropriate action (see paragraph 32.7-5).

(2) *Timeliness of Definitization Actions.* ACOs shall use a DLA Form 1516, Unpriced Order Control Register, or a computerized equivalent to ensure timely action to definitize unpriced orders.

(3) *Level of Administration.* Upon definitization, ACO-negotiated orders will remain in part A. For PCO-negotiated orders, see paragraph 90.15-6.

16.703-5 Priced Orders

a. *Issued by PCO*

(1) The order may be placed by the PCO without any request for Contract Administration Services other than normal postaward administration.

(2) However, in some instances, the PCO may request pricing/negotiation support from the ACO prior to PCO placement of the order.

b. *Issued by ACO*

(1) If the CAO is authorized to issue orders (see FAR 42.202(c)), the ACO will prepare and issue the order in accordance with the delivery schedule and other provisions contained in the contract/BOA.

(2) The order will contain pertinent information prescribed in FAR 16.506(d) whether issued under a BOA or indefinite delivery type contract.

16.703-6 Unpriced Orders

a. *Issued by PCO.* Orders may be placed by the PCO authorizing the contractor to proceed in advance of final pricing. Authority for subsequent negotiation and definitization of the order may then be transferred to the ACO. In such cases, applicable portions of the procedure set forth in subparagraph b below and paragraph 16.703-7b will apply.

b. *Issued by ACO*

(1) If authorized and upon determination of a requirement to issue an unpriced order, the ACO shall issue the order promptly and make appropriate entries in the order control register.

(2) Orders issued under BOAs as well as indefinite delivery type contracts shall contain the information specified in FAR 16.506(d) to the extent appropriate.

(3) In the absence of firm prices, the orders shall contain monetary limitations on the obligations of the Government.

(4) Action will be taken to assure that a proposal is submitted by the contractor within the period prescribed in the contract or order.

(5) Price/cost analysis of the contractor's proposal will be requested when applicable (see part 15.805).

16.703-7 Additional ACO Responsibilities

a. *Under BOAs Only*

(1) *Justification and Approval (J&A).* When ACOs are authorized to issue orders under BOAs, whether priced or unpriced, the PCO shall provide a copy of the justification and appropriate approvals by FAR 6.303 and 6.304. Similarly, any special determination and findings (D&F) still required by FAR Part 6 shall be provided by the PCO. Under no circumstances shall a J&A or D&F be issued by the ACO. For PCO-orders delegated for definitization it shall be presumed that the PCO has complied with all appropriate requirements.

(2) *Class Justification and Approval (CJ&A).* A CJ&A or a class determination and finding (CD&F) prepared by a PCO must expressly state that it is a CJ&A/CD&F for a class of contracts and shall be for a specified period. Wording in a J&A, D&F or in the BOA related to "blanket authority" for the ACO to issue orders does not constitute a CJ&A/CD&F. In those cases where the BOA is covered by a CJ&A or CD&F, the ACO shall ensure that each order is within the scope of the CJ&A and shall document the contract file accordingly. Thus, the ACO should assure that the supplies or services covered by the CJ&A/CD&F and the order are clearly defined and are the same.

(3) *Authority for Contracting Without Competition.* FAR 16.703(d) (2) (iii) requires that, when applicable, each order issued under a BOA cite the authority which permits contracting without providing for full and open competition. When the ACO is authorized to issue orders, the ACO shall cite the authority contained in the PCO's J&A/D&F or CJ&A/CD&F.

(4) *Synopsizing.* Synopsizing of orders under BOAs involves two actions; one of which is taken by the PCO before the order is placed and one which is taken after the order is placed.

(a) Proposed orders which are to be placed under a BOA are to be synopsized by the PCO. Requests to issue orders must provide a copy of the PCO's synopsis required by FAR 5-201 or a copy of the exception determination specified at FAR 5.202(a) or (b). ACOs will not issue any synopsis required by FAR 5.201.

(b) It is the ACO's responsibility to synopsize all unclassified orders exceeding $25,000 which are placed (awarded) under a BOA and are likely to result in the award of any subcontracts. A copy of the PCO's "preaward" synopsis must be provided to the ACO in order to obtain the technical details required by FAR 5.207(b)(4) for use in the award synopsis required by FAR 5.301.

(5) *Questionable Requests to Issue Orders.* Where analysis indicates that any written J&A/D&F or instructions for use of a CJ&A/CD&F received from the cognizant PCO with the request for issuance of an order may be questionable or possibly improper, the ACO's reservations shall be pointed out to the PCO and written confirmation of the validity of the questioned J&A/D&F received prior to issuing any order. Requests for issuance of orders under BOAs which do not provide the documentation required by DFARS 16.703(d)(1)(71) shall not be accepted.

(6) *Authority to Issue Orders under Navy Overhaul Maintenance and Repair (OM&R) BOAs.*

(a) On 26 August 1987, the Defense Acquisition Regulatory (DAR) Council approved DAR Deviation 87-953, applying only to DLA and the Navy, for a two year test period.

(b) The deviation allows Navy contracting activities to delegate the issuance of orders under OM&R BOAs to DLA ACOs without prior coordination with the CAO. The following procedures apply:

((1)) Prior coordination with the CAO on the Availability of Resources: Not required for Navy delegation of issuance of orders under OM&R BOAs. However, prior coordination is required for all other functions that are not included in FAR 42.302.

((2)) Sole source justification for orders: The Navy's Class Justifications and Approvals (J&As) prepared for sole source placement of orders under its BOAs satisfy this requirement. Accordingly, Navy contracting activities will provide a copy of the Class J&A for each BOA under which it delegates the issuance of orders to DLA ACOs, and DLA ACOs will accept that as the justification for all orders that might be placed under that BOA.

((3)) Preaward synopsis of BOA orders: DLA ACOs will not issue preaward synopses; nor will they accept delegations to issue orders that require preaward synopsizing. The PCO should accomplish the synopsis and furnish a copy of the synopsis in accordance with DFARS 16.703(d)(1)(71) or a copy of the exception determination. However, Navy Class J&As which state the BOA itself was synopsized but that each order under the BOA need not be synopsized will be accepted as a valid determination under FAR 5.202(a) to not synopsize. Accordingly, when Navy contracting activities provide such Class J&As, DLA ACOs are authorized to issue orders under those BOAs.

((4)) Authorization for the placement of unpriced orders: A "Class Authorization" signed at the activity Deputy Commander for (or Director of) Contracting-level will be accepted by DLA ACOs as authorization for the issuance of unpriced orders, so long as the following conditions are met: (i) the "Class Authorization" applies only to a specific BOA, (ii) the "Class Authorization" includes the impact statement required by DFARS 17.7503(b)(1), and (iii) it contains a set expiration date (which will usually coincide with the expiration date of ordering authority under the applicable BOA).

(c) Navy delegations of authority to issue orders that do not comply with the requirements of subparagraph (b) above should be returned to the contracting activity involved with notice as to what deficiencies must be corrected. Similar delegations received from any other service or agency require prior coordination with the CAO on the availability of resources but may also be evaluated against the points in subparagraphs (b)((2)) through (b)((4)), and if found satisfactory (resources are available, etc.), may be accepted.

b. *Under BOAs and Indefinite Delivery Type Contracts*

(1) *Processing Orders.* As part of the process of issuing, negotiating, and definitizing orders, the ACO shall ensure compliance with the following:

(a) Submission of the cost proposal on the prescribed SF 1411, Contract Pricing Proposal, when applicable (see FAR 53.215-2).

(b) Submission of the Certificate of Current Cost or Pricing Data, when applicable (see paragraph 15.805-17).

(c) Preparation of the price negotiation memorandum required by FAR 15.808 and DFARS 15.808 (see paragraphs 15.805-16 and 90.16-7).

(d) Submission of the proposed negotiation action to the Board of Review when applicable (see part 90.16).

NOTE: Orders under BOAs and indefinite delivery type contracts are also subject to the requirements for audit follow-up (see part 90.01).

(e) Use of the Weighted Guidelines Method for establishing profit objectives when applicable (see DFARS 15.902).

(f) General requirements outlined in part 15.805 pertaining to effective price and cost analyses including "most favored customer" reviews as appropriate.

(g) Requirements to include appropriate Small Business Concerns clauses (see FAR 17) and to include a preliminary basic subcontracting plan in unpriced orders (see FAR 19.702) expected to exceed $500,000, wherever practicable, and to obtain a PCO approved (see paragraph 19-3c) subcontracting plan within 90 days after issuing unpriced order or before definitizing order, whichever occurs first.

(h) Requirements of FAR 22.805 to obtain preaward clearance from OFCCP prior to issuance of any BOA order, or indefinite quantity order that is $1 million or more.

(2) *Contract Files*

(a) The ACO will assure that the official files contain all contractual documents issued, as well as supporting data showing coordination of interested functional elements. When the volume of correspondence and contractual papers warrants, the files for each order may be broken into parts as provided in paragraph 4.8-6a.

(b) Part A and B orders may be retired any time during the life of the BOA or contract under which they were issued (see paragraph 4.8-7b and paragraph 4.804-8b). Factors which should be taken into consideration when making a decision to retire a completed order independent of the BOA or contract are:

1. Orders issued under incentive, cost, or redeterminable BOAs which may require subsequent adjustment resulting from audit.

2. Orders containing the economic price adjustment clause which may require late modification under the adjustment provision.

3. Orders which contain cost accounting standards subject to later adjustment under PL 91-379.

4. Other cases where an extended retrieval process is likely to interfere with effective administration of the BOA or contract.

(3) *Distribution of Procurement Documents.* Execution and distribution of procurement documents will be accomplished in accordance with FAR 4.2 and DFARS 4.2. ACOs will prepare and execute only one original; all other copies required for distribution will be reproduced from the single signed original. In addition, the ACO will ensure that a reproduced copy of the contractual document is distributed when applicable in accordance with DFARS 4.671-4(e) or 4.672-3(g). For orders which are definitized by the ACO and which contain a warranty clause, the ACO will furnish warranty cost data to the PCO. The warranty cost data must be separately identified, and can be forwarded to the PCO by letter, in the PNM, or in the SF 30 document.

17.1 MULTIYEAR CONTRACTING

17.1-1 References

a. FAR 17.1, Multiyear Contracting.
b. FAR 42.302(a)(24).
c. DAR 1-322, Multiyear Procurement.
d. DAR 1-406(c)(lxviii).
e. DLAM 8110.1, Termination Manual for Contract Administration Services.

17.1-2 General. Responsibility for negotiating claims for cancellation charges pursuant to the cancellation of items clause, FAR 52.217-2, of multiyear procurements is a normal function of CAOs. Accordingly, in the event cancellation occurs with respect to one or more program years, either as the result of the issuance of a notice that funds will not be available or the absence of a notification within the required time that funds have been made available, the ACO, at the expiration of the time period specified in the schedule of the contract, shall refer the contract to the cognizant termination element for appropriate action in effecting settlement of the claim for cancellation charges pursuant to the cancellation of items clause.

17.74 CONTRACTS WITH REQUIREMENTS FOR PROVISIONED ITEMS

17.74-1 References

a. FAR 15.8, Price Negotiation.

b. DFARS 17.74, Contracts with Requirements for Provisioned Items.

c. DAR Section III, Part 8, Price Negotiation Policies and Techniques.

d. DAR Section IV, part 3, Contracts with Requirements for Provisioned Items.

e. DLAM 8300.1, Production Manual for Contract Administration Services, Section 2-1600.

f. DLAM 8110.1, Termination Manual for Contract Administration Services.

g. MIL-STD-1552, Uniform DoD Requirements for Provisioning Technical Documentation.

h. MIL-STD-1561, Uniform DoD Provisioning Procedures.

17.74-2 Scope. This part sets forth the procedures peculiar to the administration of contracts for end items of equipment under the terms of which the Government has the right to order spares/repair parts, special tools, air/ground support equipment and technical documentation, etc., through the use of provisioning procedures.

17.74-3 Definitions

a. See DFARS 17.7401.

b. See MIL-STD-1561.

c. *Provisioning.* A complex series of events, each of which is crucial to achieving supply readiness. It is the process of determining the range and quantity of items (i.e., spares and repair parts, special tools, test and support equipment) required to support and maintain a system, an equipment or other end item of material for an initial period of time until implementation of supply system support. Provisioning includes the identification of support items, the collection of technical data, the preparation of technical supply and maintenance documents and the procurement of reliable, cost effective inventories of spare parts to support the equipment.

d. *Long Lead Time Items.* Those items which, due to their complexity of design, complicated manufacturing process or limited production, require early ordering to ensure an adequate delivery schedule. That is, acquisition must commence in advance of the fiscal year in which funds are authorized and appropriated to acquire the requisite spares.

17.74-4 General

a. The fundamentals of the provisioning process can be viewed simply as a process which involves:

(1) Submission of Provisioning Technical Documentation (PTD) or Statement of Prior Submision (i.e., that the equipment/component is identical to one previously provisioned and assigned an Allowance Parts List (APL) number).

(2) Range and depth decisions made by the provisioning activity and inventory control point including initial system stock.

(3) Publication of documentation.

b. The provisioning cycle is an essential and critically timed series of actions and informational exchanges between the contractor and the Government; failure on the part of either party to take timely actions can seriously impact the supply system. Each of the Military Services and DLA have published provisioning procedures (specifications) which prescribe procedures for determining requirements, milestoning the provisioning cycle and otherwise obtaining support items when needed. Complex contracts may contain more than one provisioning requirements statement (PRS) and/or may provide for the use of multiple provisioning methods, i.e., separately provisioning high mortality requirements for delivery concurrent with end items, and for longer range periods of support.

c. Provisioning procedures specify that the Government will issue a statement of provisioning policy for the purpose of establishing the provisioning methods applicable to the contract, indicating the range and nature of PTD required, the type of provisioning conferences to be held, sample item requirements, and time schedules for conferences and submission of data. The PRS applicable to the equipment being procured may be issued as part of the basic contract or issued by contract modification within a prescribed number of days after award.

d. PTD is information furnished by the manufacturer and used by DoD for the identification, selection, and determination of initial requirements and cataloging of support items to be procured through the provisioning process. PTD includes, but is not limited to provisioning lists, associated drawings, item descriptions and electrical accounting machine punch cards as specified in the PRS.

e. Provisioned items orders for spare/repair parts and other items selected by provisioning activities, as authorized by the terms of contracts, are normally initiated and issued by PCOs. ACOs may issue orders when expressly delegated this authority on receipt of a statement of requirements and a commitment of necessary funds.

f. ACOs are responsible for the following functions on contracts under which items/data are acquired through provisioning:

(1) Ascertain that the assigned Industrial Specialist (IS) monitors the contractor's progress during the provisioning cycle to ensure the timely furnishing of PTD, catalogs, manuals, and samples.

(2) Issue provisioned items orders and obligate funds as delegated. When an ACO is requested to issue a provisioned items order after expiration of the period for ordering, as established by the contract, the PCO will be requested to initiate action to modify the contract for the purpose of extending the ordering period.

(3) Negotiate prices of items on unpriced provisioned items orders and execute supplemental agreements definitizing prices and delivery terms.

(4) Process changes to provisioned items, whether of contractor or Government origin, in accordance with contract requirements and/or instructions of the provisioning activity.

17.74-5 Procedures

a. The ACO will ensure that contracts with provisioning requirements are flagged in the CAR with a standard coded remark (see paragraph A-200.3).

b. A Postaward Orientation Conference (PAOC), as prescribed in part 42.5 should normally be held on all contracts with provisioning requirements. In those circumstances where the ACO is satisfied that the contractor has complete understanding of the applicable provisioning procedures, a Postaward Orientation Conference is not required. When conducting postaward orientation, in connection with provisioning requirements, particular attention should be given the following matters:

(1) Ensure that the contractor is in possession of the provisioning requirements statement incorporated in the contract as well as the current edition of any related specifications, forms, and formats prescribed therein.

(2) Ascertain that the contractor fully understands the provisioning requirements statement and is aware of his responsibilities in the provisioning cycle.

(3) Discuss each item of documentation to be furnished by the contractor, i.e., various parts lists, Electrical Accounting Machine card decks, drawings, etc., as well as the due dates for delivery of each item of documentation.

(4) Review the procedures for ordering and funding of spare parts, or other items including additional technical documentation, negotiating prices therefor and establishing delivery dates.

(5) Instruct the contractor to furnish the ACO with information copies of all communications with the provisioning activity. NOTE: On arrangement with PCO/provisioning activity, the orientation requirements specified above may be accomplished in conjunction with the preprovisioning or provisioning planning conference, when such a conference is scheduled by the provisioning activity. In such event, the ACO will document the file accordingly.

c. Pursuant to the contract provisioning requirements statement, the contractor will prepare recommended lists of spare/repair parts or other support items, along with the required PTD for furnishing to the provisioning activity. DLAM 8300.1 assigns to the IS the responsibility for monitoring the timeliness of contractor submissions; on notification from the IS of the contractor's failure to adhere to these requirements, appropriate corrective action will be taken by the ACO.

d. After selection of items to be provisioned, the PCO/provisioning activity normally issues an unpriced provisioned items order. Subject to the terms of the contract and the availability of funds, the order authorizes the contractor to proceed with manufacturing, purchasing, etc., and in some instances, delivery of the provisioned items.

e. The PCO/provisioning activity may request the ACO to issue provisioned items orders. ACOs are authorized to issue orders based on a statement of requirements and a commitment of funds in the amount estimated to cover the cost of the items to be ordered. The order will be issued within 48 hours after receipt by the ACO of a proper request. Particular care will be taken to comply with administrative instructions of the provisioning activity when issuing orders on their behalf; examples of such instructions are: acknowledging receipt of the action request, providing prompt notice of obligating actions taken, and addressing inquiries to particular offices/codes within the activity. (See paragraph 32.7-5 for deobligation procedures.) In addition, if the requirements for provision of spare parts does not already form part of the statement of work of the contract, the ACO shall obtain a preaward clearance from OFCCP prior to ACO issuance of any order of $1 million or more in accordance with FAR 22.805. If a question arises as to whether the provisioning requirement was included in the contract work covered by the preaward clearance obtained for the original contract award, the PCO should be requested to provide clarification.

f. When issuing orders, ACOs will follow the procedures in DFARS 17.7402(b) and also include, as applicable:

(1) A description of the items ordered including quantities.

(2) The time frame within which the contractor must furnish a price quotation, or priced exhibit, for the item(s) ordered (quotations will normally be required within 60 days from receipt of order).

(3) A statement that the parties will negotiate final prices to be included in the contract by supplemental agreement, and that in event of failure to agree as to prices, the contracting officer will make a determination as to the prices to be paid.

(4) A statement that a Certificate of Current Cost or Pricing Data will be required if appropriate in accordance with FAR and DFARS 15.804-2.

(5) Delivery dates required by the Government (see subparagraph h below).

(6) Procedures for processing of changes to ordered items.

(7) Other administrative data.

g. ACOs will maintain a control register (DLA Form 1514 or computerized equivalent) by individual contract, to record provisioned items orders issued, amounts obligated, schedules for delivery of items, and due date for receipt of the contractor's price quotations for items ordered (priced exhibits). Actions to adjust (increase or decrease) amounts obligated will also be recorded.

h. When the PCO/provisioning activity requests specific delivery schedules(s), the ACO will negotiate the schedule(s) with the contractor and coordinate any deviation from the requested schedule(s) with the PCO before finalizing a supplemental agreement.

i. In the process of definitizing unpriced orders for provisioned items, the ACO is responsible for:

(1) Determining the acceptability of pricing methods proposed by the contractor. Utilization should be made of the Financial Services element in the conduct of any review which is deemed necessary.

(2) Verifying that items and quantities listed on the priced exhibit (proposal) are identical to those contained on the provisioned items order. This examination will be conducted by the Financial Services element during their review of the contractor's pricing. However, when Financial Services cannot readily verify the list, it will be returned to the ACO with appropriate comments. In such cases, the ACO will refer the exhibit to the provisioning activity for verification.

(3) Availing himself of prior experience data obtained from similar contracts with the contractor, making use of audit reports and/or information provided by the PCO, and utilizing available cost and price/technical support (see part 15.805) to ensure that fair and reasonable prices are negotiated for provisioned items. The ACO shall establish prenegotiation objectives, as appropriate before the negotiation of any pricing action in accordance with FAR 15.807(b). Price negotiation policies and techniques set forth in FAR and DFARS 15.8, will be utilized. The memorandum of price negotiation (PNM) will be prepared by the ACO as required by FAR and DFARS 15.808, and copies of the prenegotiation objectives and PNM will be distributed to the PCO and the cognizant auditor. See 90.01 for audit followup requirements.

(4) Preparing and executing a supplemental agreement to evidence the prices negotiated. Prices will be established on a firm fixed-price basis, except in those instances where the contract expressly provides another method of pricing provisioned items.

j. When additional funds are required for use in finalizing and executing supplemental agreements based on negotiations conducted, ACOs, in their requests to the PCO/provisioning activity, will identify the provisioned items order(s) for which the funds are required and the amount needed by individual order. Where the provisioned items order was issued by the ACO, reference to the document requesting ACO issuance of the order will also be furnished. Supplemental agreements, issued by the ACO which obligate or deobligate funds will be processed in accordance with the procedures in paragraphs 43.103-3 and 43.103-4.

k. Deletion/reduction in quantities of provisioned items will be processed in accordance with DLAM 8110.1 and the terms of the contract. Particular attention will be accorded instructions of the PCO/provisioning activity as to the method of documenting deleted items (for supply control purposes).

l. As orders are placed against provisioning requirements on bulk funded contracts, the ACO will be alert for possible excess or insufficient funds and take appropriate action.

m. The Contract Closing Action Status Request/Reply (NLA) will not be annotated "Final" by the ACO until the IS has verified that all provisioning delivery requirements of the contract have been satisfied.

19 SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

19–1 References

a. FAR 19.7, Subcontracting with Small Business and Small Disadvantaged Business Concerns.

b. FAR 19.8, Contracting with the Small Business Administration (The 8(a) Program).

c. FAR 19.9, Contracting Opportunities for Women-Owned Small Businesses.

d. FAR 19.201, General Policy.

e. FAR 42.302, Contract Administration Functions.

f. DFARS 19.7, Subcontracting with Small Business and Small Disadvantaged Business Concerns.

g. DFARS 19.201, General Policy.

h. DFARS 19.502–70, Combined Small Business-Labor Surplus Area Set-Asides.

i. DLAM 9100.1, Small and Disadvantaged Business Utilization Operations Manual.

19–2 General

a. It is Government policy that small and small disadvantaged business concerns receive a fair share of contracts and subcontracts and that all contracting and contract administration activities take reasonable actions to increase participation by such firms. FAR and DFARS 19.201 define DoD policy for subcontracting with small and small disadvantaged business concerns and establish criteria for use of required contract clauses.,

b. Contract administration functions and specific ACO review responsibilities concerning contractor's small business subcontracting plans are provided in FAR 42.3, and FAR and DFARS 19.706, respectively.

c. The duties of the Small and Disadvantaged Business Utilization (SADBU) Specialists per FAR 19.201 include advising and assisting contracting officers by monitoring, maintaining records and reporting of contractor's compliance with small business subcontracting plans. The SADBU Specialist is also responsible for reviewing contractors' plant or division-wide master subcontracting plans and providing recommendations to the ACO concerning adequacy of these plans. DLAM 9100.1 establishes procedural and operational guidance for the SADBU specialist. It is essential for ACOs as team leaders to also be familiar with the SADBU Operations Manual to avoid duplication of effort and to maintain good working relationships.

19–3 Procedures

a. *Evaluation of Subcontracting Plans Prior to Contract Award.* PCO requests to evaluate contractor's small business subcontract plans received by ACOs should be referred immediately to the cognizant SADBU specialist for review and direct response to the PCO.

b. *Review and Approval of Master Subcontracting Plans.* Contractor requests for approval of plant or division-wide master subcontracting plans should be referred to the cognizant SADBU Specialist for review and recommendations. Upon receipt of the SADBU Specialist's recommendations, the ACO is responsible for approving or disapproving contractors' plant or division-wide master subcontracting plans. Master plans shall be effective for a 1-year period after approval; however a master plan when incorporated in an individual plan shall apply to that contract (or BOA order) throughout the life of the contract. Prospective contractors should provide copies of CAO approved master plans, along with individual contract goals, to the cognizant SADBU Specialist for review of the goals and forwarding to the PCO for acceptance.

c. *Negotiation and Approval of Subcontracting Plans.* Negotiation and approval of individual subcontract plans or goals are PCO functions which should not be delegated to ACOs. When ACOs have responsibility for issuing and definitizing orders under BOAs which are expected to meet or exceed the $500,000 threshold, ACOs should obtain a subcontracting plan or an approved master plan with goals from the contractor, have the SADBU specialist review it, and submit it, with the SADBU specialist's evaluation, to the PCO for approval. The PCO approved plan should then be incorporated in the contractual document definitizing the negotiated order (see paragraph 16.703–7b(1)(g)). The same procedure applies to provisioning orders if a subcontracting plan is required.

d. *Administration of Small and Small Disadvantaged Business Clauses and Subcontract Plans after Contract Award.*

(1) All contracts containing clauses which require subcontracting plans are readily identified for ACOs and SADBU specialists to perform their particular responsibilities in monitoring contractor's compliance, maintain records and to insure timely submission to PCOs of evaluation reports on contractor's compliance. The PCO is required to use the MILSCAP Special Contract Provisions Coded Remark R whenever FAR Clause 52.219–10 is used in the contract. Standard Coded Remark 32 will be input into the MOCAS System whenever FAR Clauses 52.219–9 or 10 are used in the contract.

(2) The SADBU specialist performs the functions of actual surveillance, documentation, and compliance reporting; however, the ACO has the responsibility to insure contractor's compliance with approved plans and that an evaluation report on contractor's performance is furnished to the PCO at contract completion, or immediately at any time performance is unsatisfactory. The evaluation report normally is initiated by the SADBU specialist, reviewed by the ACO and then forwarded with transmittal letter to the PCO. This action item should be entered on the DD Form 1597, Contract Closeout Checklist, to reflect completion prior to contract closeout.

(3) When contracts contain an Incentive Subcontracting Program Clause, (FAR 52.219.10) ACOs should work closely with the SADBU specialist to provide appropriate advice and recommendation to the PCO as to contractor's actual performance and a recommendation as to the specific percentage of fee to be awarded, if any.

(4) Subcontracts submitted to the ACO for consent (reference Part 42.2) should be reviewed by the SADBU specialist to assure contractor compliance with its subcontracting plan, and pertinent contract provisions pertaining to small and small disadvantaged businesses, women-owned businesses and labor surplus area concerns.

19-4 Contracts Awarded by the Small Business Administration

a. In accordance with section 8(a) of the Small Business Act (15 USC 637), the SBA Administrator may certify to the Military Secretary concerned that the SBA is competent to perform a specific contract. The PCO, in accordance with FAR 19.8, is authorized to award the contract to the SBA, which is empowered to arrange for performance by negotiating or otherwise letting subcontracts to small business concerns. In these instances, the Standard Form 26, Award/Contract, will be prepared by the DoD procuring activity and signed by the SBA's contracting officer.

b. The SBA may assign the 8(a) subcontract to the appropriate DCAS office for administration essentially as a prime contract awarded directly to the supplier. The ACO and DS&FM are responsible to insure that the standard coded remark (Card R-9) 27 is input into the MOCAS System. All normal contract administration functions listed in FAR 42.3 will be assigned and performed in accordance with applicable DLAMs. Except for paragraphs 19.4d and e. below, matters affecting contract administration of the 8(a) subcontract will be handled by the ACO directly with the contracting office PCO, with copies of pertinent correspondence furnished to the SBA Contracting Officer. In short, the normal DoD PCO/ACO relationship will exist. Examples of correspondence/reports which are generally considered pertinent and which should be furnished to the SBA Contracting Officer are as follows:

(1) DD Form 375, Production Progress Report, (Action Document), which makes reference to adverse conditions.

(2) Cure Notice.

(3) Show Cause Letters.

(4) DCAA Form 1—Notice of Contract Costs Suspended and/or Disapproved.

(5) DCAA Audit Reports which describe adverse financial conditions.

(6) Adverse Financial Reports on 8(a) subcontractors within the Region.

(7) Method "D" Corrective Action Letter.

(8) Any other information which is pertinent in the ACO's judgment.

c. The SBA will usually chair an orientation conference upon award of an 8(a) subcontract. Preferably, representatives of the purchasing office, the 8(a) subcontractor, the DCAS office, including the SADBU specialist, and the SBA will attend the conference. Whenever feasible, the conference will be held at the 8(a) subcontractor's facility. In many cases, the conference will eliminate the need for a normal postaward orientation conference (see paragraph 42.5-5f). Any existing or potential problem areas, particularly the necessity for the subcontractor to comply with the provisions of the Service Contract Act of 1965, as amended, should be identified and discussed during the SBA orientation conference.

d. ACOs should arrange for frequent liaison with the 8(a) subcontractor. The SADBU specialist, SBA and the PCO should be notified immediately of any known or anticipated problems (including noncompliance with the Service Contract Act of 1965, as amended). Further, the SBA and PCO should be notified by the ACO at least 10 days prior to the date any adverse action is taken against the 8(a) subcontractor.

e. When the ACO determines that technical assistance is required over and above that normally provided by DoD personnel to avoid or correct serious performance deficiencies, he will notify the SADBU specialist, SBA and the PCO of the problems and request that additional SBA resources be provided to assist the 8(a) subcontractor in correcting the deficiencies.

f. The SBA recommends that PCO use a "Tripartite Agreement" when amending 8(a) subcontracts. If the buying activity concurs, such agreements may be used on 8(a) subcontracts to modify both the prime contract and subcontract with one document executed by the SBA Contracting Officer, the

8(a) subcontractor and the PCO or the ACO when delegated.

g. Pursuant to FAR 42.302(b), the PCO may delegate authority to the ACO to modify 8(a) subcontracts to extend delivery schedules. When so delegated, the ACO will coordinate with the PCO on the amount of consideration negotiated and the revised schedule (see 42.11-3d(3)).

22.101 LABOR RELATIONS

22.101-1 References

a. FAR 22.101, Labor Relations.

b. FAR 22.4, Labor Standards for Contracts Involving Construction.

c. FAR 22.8, Equal Employment Opportunity.

d. FAR 52.222-11, Subcontracts (Labor Standards).

e. FAR 52.222-26, Equal Opportunity.

f. FAR 52.222-41, Service Contract Act of 1965.

g. DFARS 22.101, Labor Relations.

h. DFARS 22.4, Labor Standards for Contracts Involving Construction.

i. DFARS 22.8, Equal Employment Opportunity.

j. DFARS 22.10, Service Contract Act of 1965.

k. DFARS 52.2222-7000, Potential Application of the Service Contract Act, as Amended (Fixed Price).

l. DLAM 8300.1, Production Manual for Contract Administration Services, Part 6.

22.101-2 Procedures

a. The Production element is responsible for advising the ACO and the PCO of any labor dispute, work stoppage, or threatened work stoppage.

b. The ACO will rely on the Production element to arrange for the protection and removal of strike-bound Government material, and should participate only upon specific request from the Production element.

c. The ACO will coordinate with the ILRO in the Production Directorate on all labor matters when construction, supply or nonconstruction contracts assigned to the CAO for administration contain labor standards provisions. The ACO will receive a computer generated alert for Standard Coded Remark 40, Labor Standards Provisions, as described in A-600.

(1) The ACO will notify the ILRO of receipt of any contract or subcontract involving construction which contains labor standards. Particular attention should be given to subcontracts under facilities type contracts which would be subject to these provisions (FAR 52.222-11 applies).

(2) The ACO will rely on the ILRO to conduct compliance checks, investigations, or other actions necessary to assure contractor compliance with contract labor standards. The ILRO will furnish evidence to the ACO that these actions have been completed. The ACO is responsible for assuring that this evidence is received and filed in the official contract file.

(3) When regular or special compliance checks or individual complaints indicate possible violations may have occurred, requiring investigation, the ACO will authorize the ILRO to conduct such investigation. The investigator will provide the ACO with a complete investigation file.

(4) The ACO shall take required action as prescribed in FAR/DFARS as they pertain to construction contracts assigned for administration.

d. Payrolls, statements, and other documentation are required to be submitted by contractors under construction, supply or nonconstruction contracts containing labor standards provisions. The ACO is responsible for obtaining, examining and assuring that this documentation is filed in the official contract file.

e. The semiannual report on compliance and enforcement of labor standards required by FAR 22.405-17 will be prepared by the ILRO. To assist the ILRO in preparing this report, the ACO will furnish data required by FAR on those contracts assigned to the CAO for administration.

22.101-3 Equal Employment Opportunity

a. While the ACO does not have any specific responsibility in connection with the sanctions and penalties of FAR 22.809, there may be circumstances where the cooperation of the ACO may be requested by the Department of Labor, Office of Federal Contract Compliance (OFCCP), in the development of contract information related to enforcement proceedings. Such requests should be responded to in a prompt and fully responsive manner.

b. If the ACO becomes aware of a contractor's employment practices which in any way preclude a person from employment due to the individual's race, color, religion, sex or national origin, such information will be immediately transmitted to the regional Department of Labor, OFCCP.

22.103 OVERTIME

22.103-1 References

a. FAR 22.103, Overtime

b. FAR 52.222-2, Payment for Overtime Premiums.

c. DFARS 22.103, Overtime.

d. DAR 7-203.27, Payment for Overtime Premiums.

e. DAR 12-102, Overtime.

22.103-2 General. Overtime is divided into two categories, scheduled overtime or that either set forth in the schedule of the contract or requiring specific approval prior to use and nonscheduled overtime or that covered by one of the exceptions in the clause. This part deals primarily with the ACO role in reviewing requests for and use of scheduled overtime since the need for and reasonableness of nonscheduled overtime is considered in the approval of the final voucher under the applicable contract.

22.103-3 Procedures

a. *Authorized Overtime*

(1) When overtime premium at Government expense has been approved by the PCO pursuant to FAR and DFARS 22.103-4, periodic reviews of contractor use of overtime will be accomplished by the ACO with the assistance of the engineer, industrial specialist, price/cost analyst, and other functional specialists as appropriate. Such reviews will assure the continuing validity of the reasons justifying the need for such overtime, and will support ACO determinations of the allowability.

(2) Contractor use of overtime for the purpose listed as exceptions in the contract clause does not require advance approval but it is subject to periodic reviews to assure that it is properly allocable to work under the contract.

(3) The above referenced periodic reviews will be accomplished not less frequently than once each calendar quarter in which such contract(s) are being performed, but may be accomplished more frequently if considered necessary by the ACO. A report of each review, together with ACO evaluation and summary of appropriate action, will be made part of the official file.

b. *Requests for Scheduled Overtime*

(1) Any contractor request for approval of overtime or premium shift work will be forwarded promptly to the PCO with a specific recommendation by the ACO along with his analysis of the contractor's justification required by the clause. NOTE: DCASR personnel are not authorized to approve contractor overtime in advance.

(2) Contractor proposals which involve scheduled overtime or premium shift work and which are referred to the ACO for review and recommendation will be analyzed with the assistance of the IS, price/cost analyst, and other functional specialists as required. Resulting analysis and ACO recommendations will be forwarded promptly to the PCO.

c. *Coordination with Military Departments or DLA*. Where two or more Departmental contracting activities have concurrent contracts at a single facility and the approval of overtime premiums by one such activity is likely to affect the performance of, or payments in connection with contracts of another such activity, the agreements prescribed by DFARS 22.103-4 necessitate that the recommendation forwarded to the PCO by the ACO contain adequate consideration of any such effect on the contracts of such other contracting activities. The recommendation will specifically state whether or not one such activity is known to have been previously selected to act in behalf of all Departmental contracting activities concerned.

22.6 WALSH-HEALEY PUBLIC CONTRACTS ACT

22.6-1 References

a. FAR 22.6, Walsh-Healey Public Contracts Act.

b. FAR 52.222-19, Walsh-Healey Public Contracts Act Representation.

c. FAR 52.222-20, Walsh-Healey Public Contracts Act.

d. DFARS 22.6, Walsh-Healey Public Contracts Act.

e. DLAM 8300.1, Production Manual for Contract Administration Services, sections 1-103(o) and 6-400.

f. DLAM 8280.1, Specialized Safety Manual.

22.6-2 General

a. Contractors who breach or violate the representations and stipulations required by the Walsh-Healey Public Contracts Act (41 USC 35-45) (hereafter referred to as the Act) may be subject to any of the following penalties:

(1) Assessment of liquidated damages by the Government.

(2) Debarment from contract award for a period of 3 years.

(3) Contract cancellation and repurchase by the Government against the contractor's account.

b. The Secretary of Labor has the responsibility and authority to examine records and conduct inspections, investigate complaints and reports of violation, and make findings and determinations with respect thereto, and on behalf of the United States, to prosecute contractors who breach or violate the representations and stipulations required by the Act. As a result of the Labor Department's investigation, the Secretary may assess damages and require payment from such amounts to unpaid employees, include contractors on the list of firms ineligible to receive Government contracts, and recommend that procuring departments cancel contracts.

c. The Department of Labor conducts its investigations and enforces the requirements of the Act independently of the procuring department, except for routine inquiries concerning the volume of business a department has with a contractor.

d. DCAS is not responsible for examination of employment records or conducting safety inspection of the type foreseen by the Act.

22.6-3 Procedures

a. On receipt of a contract subject to the Act, the ACO will ensure that the contractor is furnished the poster (W.H. Publication 1313, Notice to Employees Working on Government Contracts) as prescribed by FAR 22.608-5(a). If work on Government contracts is performed in various departments and a single poster in the plant is not readily accessible to all employees, then additional copies of the poster must be posted in the various departments.

b. DCAS reports of alleged violations involving safety of the type foreseen by the Act will be forwarded by the ACO to the cognizant OSHA Area Director. The addresses for OSHA Area Directors, if not known, can be obtained by contacting the region Specialized Safety and Flight Operations Division.

c. Complaints and reports of violation of the representations and stipulations by the Act, other than safety-type reports, received by the ACO will be forwarded via the PCO to the Department of Labor.

d. Following submission of a complaint or report of violation, CA will be continued in the normal manner.

e. Department of Labor field representatives may contact the CAO for general information relative to a contractor's contracts, e.g. number of contracts held and dollar value. Such requests will be complied with as a matter of routine.

23.1 ENVIRONMENTAL PROTECTION

23.1-1 References

a. FAR 23.1, Pollution Control and Clean Air and Water.

b. FAR 52.223-1, Clean Air and Water Certification.

c. FAR 52.223-2, Clean Air and Water.

d. DLAM 8300.1, Production Manual.

e. DLAM 8300.3, Transportation and Packaging Manual.

f. DLAM 8135.1, Property Administration Manual.

g. DLAM 8130.1, Contract Property Disposition Manual.

23.1-2 General

a. Primary responsibility for ensuring compliance with Federal, State, and/or local environmental laws, regulations, codes, etc., rests with those agencies, such as the Environmental Protection Agency, charged with this responsibility under the laws. However, it is the responsibility of all DoD personnel who, during the course of performing their regular duties, become aware of possible violations of environmental laws, to report suspected violations to the ACO.

b. The ACO will report suspected violations to the PCO. If more than one PCO is involved, the ACO will notify the PCO having the predominant contract(s) and provide copies of the notification to other PCOs having contracts with the affected facility. The ACO may request the IS to verify any violations before reporting them to the PCO. The ACO should provide the DCASR Office of Counsel a copy of the notification to the PCO(s).

c. Environmental matters involving packaging, packing, and transportation will be handled by Transportation and Packaging personnel.

d. Environmental matters concerning Government property will be handled by the Property Administrator or Plant Clearance Officer.

e. Environmental actions requested in Preaward Surveys will be processed by the Preaward Monitor.

23.1-3 Clean Air and Water

a. The Clean Air Act, the Federal Water Pollution Control Act, and related regulations and orders of the Environmental Protection Agency establish a policy that the Federal Government shall undertake procurement and financial assistance activities in a manner that will result in effective enforcement of these Acts. This is accomplished by assuring that: nonexempt contracts are awarded only to contractors who use facilities which are not listed on the Environmental Protection Agency List of Violating Facilities; and contractors comply with the clean air and water clause during the course of contract performance of nonexempt contracts.

b. When a contract which includes FAR Clause 52.223-2, Clean Air and Water, has been assigned to an ACO for administration, the ACO will:

(1) Conduct a PAOC, if necessary, in accordance with paragraph 42.5-2. If a conference is not held, the provisions of paragraph 42.5-3c will govern.

(2) Report violations of the Clean Air and Federal Water Pollution Control Act in accordance with 23.1-2b above.

(3) Assure that the contractor includes the substance of the provisions of FAR Clause 52.223-2 in nonexempt subcontracts.

23.3 SAFETY PRECAUTIONS FOR AMMUNITION, EXPLOSIVE, AND DANGEROUS/HAZARDOUS MATERIALS

23.3-1 References

a. FAR 23.3, Hazardous Material Identification and Material Safety Data.

b. FAR 42.302(a)(39).

c. FAR 52.223-3, Hazardous Material Identification and Material Safety Data.

d. DFARS 23.70, Safety Precautions for Ammunition and Explosives.

e. DFARS 23.71, Safeguarding Conventional Arms, Ammunition, and Explosives Within Industry.

f. DFARS 28.71, Accident Reporting and Safety.

g. DFARS 52.223-7000, Notice of Radioactive Materials.

h. DFARS 52.223-7001, Safety Precautions for Ammunition and Explosives.

i. DFARS 52.223-7002, Change in Place of Performance—Ammunition and Explosives.

j. DFARS 52.223-7003, Safeguarding Arms, Ammunition, and Explosives.

k. DFARS 52.228-7006, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles.

l. DFARS 52.236-7011, Airfield Safety Procedures.

m. DODI 4145.26, DoD Contractor's Safety Requirements for Ammunition and Explosives.

n. DoD 4145.26-M, DoD Contractor's Safety Manual for Ammunition and Explosives.

o. DLAM 8280.1, Specialized Safety Manual.

23.3-2 General

a. The responsibility for assuring contractor compliance with the safety provisions of a contract rests with the cognizant ACO. The DLA Specialized Safety office is responsible to survey, review and evaluate the contractor's safety program and implementation to assure compliance with contractual safety requirements.

b. The ACO relies upon the technical expertise of the Specialized Safety Office on all safety matters and should obtain review and coordination with the cognizant safety office. If, during the conduct of normal duties, the ACO observes any apparent safety violations or receives information from other functional specialists of actual or potential situations which may require safety review, he will immediately notify the cognizant Specialized Safety Office for their comment(s) and/or recommendation(s).

23.3-3 Procedures

a. During the review of all newly assigned contracts/subcontracts the ACO or one of his assistants will determine whether the contract contains any provisions pertaining to dangerous/hazardous materials. If the contract contains any such clauses or provisions for dangerous/hazardous materials, Standard ACO Coded remark H will be used to annotate the CAR in accordance with Part A-200.3 of this manual.

b. As required by DFARS 23.7003, preaward surveys will be performed for AA&E contracts. ACO participation in these surveys shall be in accordance with Part 9.1-3 of this manual.

c. The cognizant Specialized Safety Office will be invited to participate in PAOCs involving contracts containing safety clauses or hazardous materials clauses, or where the contractor has exhibited as adverse safety history. Additionally, the cognizant DIS office will be invited to participate in all PAOCs for AA&E contracts.

d. The ACO may receive contractor requests for review of site and construction plans, and/or requests for waiver or deviation from safety standards, in accordance with DoD 4145.26-M. In such cases, the ACO will request a review and recommendation(s) from the Specialized Safety Office. After receiving the Specialized Safety Office recommendation(s), the ACO will forward the contractor's request with a summary analysis and recommendation for approval or disapproval to the PCO.

e. Contractors desiring to change the place of AA&E work performance must notify and receive specific approval in advance from the PCO. This process will normally require Government safety personnel onsite review and evaluation. Upon approval, the ACO should, in coordination with specialized safety personnel, request supporting contract administration as necessary.

f. The ACO must be alert to situations where contractors are awarded contracts in which the preaward safety survey report contains prospective contractor corrective actions which may be acceptable to the procuring activity. In these cases, the contractor's proposed corrective actions should be set forth in the schedule of the resulting contract (reference DFARS 23.7003b). Furthermore, it is the ACO's responsibility to ensure, with the assistance of the Specialized Safety Office, that the contractor in fact accomplishes the required corrective actions.

g. The PCO is required to include instructions within the contract concerning final disposition of excess or residual Government Furnished Material (GFM) (to include defect/reject items) containing ammunition and/or explosives. The ACO or designee (Industrial Property Management Specialist) may become aware of or be queried by the contractor about disposal/disposition problems. Cognizant specialized safety personnel must be informed about such situations so that contractor developed procedures or other conditions do not lead to explosives mishaps for which the Government may become liable. In addition, specialized safety personnel will fully coordinate their recommendations with the cognizant ACO when becoming aware of such situations, to include AA&E material *associated* with DoD contracts, but not GFM.

h. When the ACO receives a safety report from the cognizant Specialized Safety Office, he will review the content of the report and its applicability to the terms and conditions of the contract. If the safety report requests the ACO to direct Contractor corrective action (reference DLAM 8280.1, paragraph 4.501), the ACO will process the safety report recommendations to the contractor requesting that a response, as to action taken or proposed, be returned in approximately 30 days. The ACO will also provide an informational copy to the Specialized Safety Office. Discussions, as necessary, will be held with the cognizant Specialized Safety Office to clarify or resolve any areas of apparent conflict.

i. Should safety standards violations be observed at a *subcontractor* facility which involve subcontract work, a corrective action request (reference DFARS 52.223-7001(h)) will be processed from the ACO to the cognizant prime contractor.

j. The contractor, upon experiencing an AA&E mishap, must immediately notify the contracting officer (reference DFARS 52.223-7001(e) and DoD 4145.26-M, chapter 2). This mishap reporting and investigation criteria contained in the Manual are to be closely followed and contractor actions monitored for compliance. The ACO and/or the PCO may determine that onsite assistance is required by the contractor from Government personnel and that additional information/reporting/investigation is necessary.

25.6 CUSTOMS AND DUTIES

25.6-1 References

a. FAR 25.6, Customs and Duties.

b. DFARS 25.6, Customs and Duties.

c. FAR 52.225-10, Duty-Free Entry.

d. DFARS 52.225-7007, Supplies to be Accorded Duty-Free Entry.

e. DFARS 52.225-7008, Duty-Free Entry—Qualifying Country End Products and Supplies.

f. DFARS 52.225-7014, Duty-Free Entry—Additional Provisions.

g. Customs Directive 3550-08, Procedures for Processing TSUSA 832.00 Transactions.

25.6-2 General. Duty-free entry clauses are included in DoD contracts to accrue savings to military appropriations which would otherwise be lost due to import duty being levied against foreign DoD purchases. Duty-free entry is applicable to emergency purchases of war materials (pursuant to Item 832.00, Tariff Schedules of the United States Annotated (TSUSA)) and certain supplies for vessels or aircraft operated by the United States (pursuant to 19 U.S.C. 1309). FAR and DFARS provide contract clauses which set forth the requirements of duty-free entry provisions. DLA is responsible for issuing duty-free entry certificates for all supplies imported under DoD contracts for which a claim for duty-free entry is made under TSUSA Item 832.00. The function is centralized at DCASR New York.

25.6-3 Responsibilities

a. ACOs are responsible for administering the duty-free entry provisions, verifying the duty-free entry entitlement of goods to be entered under the contract, and assuring contractor accountability for such goods. Also, the ACO should assure that prime contractors include appropriate duty-free entry clauses in their subcontracts. The ACO should take positive action to assure contractors are aware of and comply with this and other clause requirements. A Post Award Orientation Conference should be considered when duty-free entry is authorized.

b. Each Region (with the exception of the Phase I sites) will notify contractors of duty-free entry clauses through the use of computer generated postcards. Appropriate information will be printed on the postcards with the DCASR Commander's signature.

c. The Transportation Officer, Customs Function, New York will also receive, review, and process duty-free authorizations, and issue duty-free entry certificates to U.S. Customs.

d. The contractor or subcontractor is responsible for providing advance notification to the ACO that foreign supplies have been ordered which should be allowed to enter duty-free.

25.6-4 Duty-Free Entry Forms

a. Customs Form 7501 (Consumption Entry) is prepared by the contractor or an authorized agent for shipments consigned to other than a military installation, e.g., a domestic contractor's plant. The completed form shall be submitted to the District Director of Customs with a copy to DCASR New York for execution of any required duty-free entry certificates. For shipments consigned to a military installation, Customs will forward shipping documents to DCASR, New York for preparation of the required entry documentation (normally, a Customs Form 7501). DCASR New York will file the Customs Form 7501 with the appropriate Customs office together with a duty-free entry certificate.

b. An executed Customs Form 3461 "Immediate Release Permit" allows for immediate release of shipments pending the filing of Customs entry forms, provided accompanying shipping documents (invoice, bill of lading, or air way bill) identifies the DoD contract number and includes the information required in applicable duty-free entry clauses. Normally, a Customs Form 3461 must be supplied to Customs for individual shipments. However, the Government has a "master" Customs Form 3461 on file at Customs Headquarters which applies to all ports of entry and entitles all shipments consigned to a military installation to be released immediately without independent filing of a 3461.

25.6-5 Procedures. Upon receipt of a contractor's or subcontractor's notice of purchase of foreign supplies, the ACO will verify the duty-free entitlement of goods to be imported under the contract. If the contract does not provide for duty-free entry, the ACO will immediately notify the PCO by telephone or TWX and request advice on whether the contract will be modified. Upon receipt of guidance from the PCO, the ACO will either authorize duty-free entry, if appropriate, or advise the contractor that the contract does not provide for duty-free entry. If the contract does provide for duty-free entry, within 20 days of receipt of the contractor's notification, the ACO shall forward a notification to DCASR New York in the format prescribed in DFARS 25.603(b)(4).

a. *Non-Receipt of Duty-Free Entry Entitlement Notification.* If DCASR New York receives documentation indicating a shipment has been released by Customs, and an ACO notification verifying duty-free entitlement has not been received, a "Nonreceipt of Duty-Free Entry Entitlement" letter is generated by DCASR New York. (The letter will be addressed to the CAO if the shipping documentation contains the CAO DFARS Appendix N Activity Number; if not, the letter will be addressed to the buying activity.) Upon receipt of this inquiry, the ACO shall request the required notification of foreign purchase from the contractor, and remind the contractor of its contractual obligations. The ACO shall forward the duty-free notification/verification to DCASR New York within 30 calendar days from the date of the letter of inquiry, or a notice advising U.S. Customs that the shipment does not qualify for duty-free entry will be generated by the automated system in New York.

b. *Duty-Free Entry Entitlement Inquiry.* This letter of inquiry is automatically generated by DCASR NY when the current shipment when added to previous shipments exceeds the contract or subcontract price provided in the ACO notification. Similarly, it will also be generated if the shipment import date exceeds the contract or subcontract expiration date by more than 60 days.

(1) If the contract or subcontract price or expiration date has been changed by contract modification, the ACO must forward an updated notification to DCASR New York. Failure of the ACO to respond to this letter of inquiry within 30 days will cause the automated system to generate a notice of denial of duty-free entry to U.S. Customs. U.S. Customs will then invoice the buying activity for duties payable.

(2) The ACO may authorize DCASR New York to issue a duty-free entry certificate for a shipment which exceeds the expiration date parameter if it has been determined that the shipment is required and it has been determined that the contract expiration date will not be extended. The ACO must authorize each such shipment imported more than 60 days after the contract delivery or expiration date. Again, failure of the ACO to respond to the inquiry within 30 days will cause the automated system to generate a notice of denial of duty-free to U.S. Customs.

c. *Duty-Free Entry Prepurging Inquiry.*

(1) Contract files maintained in the data base of DCASR New York's automated system will be automatically closed, purged and stored on microfiche 18 months after the value of shipments imported is equal to the prime and/or subcontractor prices and the prime and subcontract expiration dates have been exceeded by more than 60 days.

(2) Prior to the final 18 month purge, the system will generate a final inquiry notice to the ACO. The inquiry will request that the ACO advise on contract status, e.g., contract extended, terminated, closed, etc. If the contract has been extended, the ACO should provide the revised contract expiration date to DCASR New York. If an ACO response is not received by DCASR New York within the 30-day time period, the contract will be closed and purged from the automated data base.

d. *ACO Reconciliation of Shipments.*

(1) DCASR New York, upon certification of a shipment for duty-free entry, will furnish the import documents to the ACO that show the specific items imported by the contractor or subcontractor as well as the quantities, dollar value and date imported. Normally, these documents will consist of a copy of U.S. Customs Form 7501, and a copy of the invoice. Upon receipt of these import documents, the ACO will review them to ensure the items and quantities are applicable to the contract, are not greater in quantity than required for the contract and have not been imported more than 60 days after delivery on the contract unless specifically and previously authorized by the ACO.

(2) If the ACO's review indicates any significant discrepancies, e.g., the imported item does not meet contract specifications or is not applicable to the contract, the ACO should confirm the apparent discrepancy with the appropriate technical specialists. If it is determined a significant discrepancy exists, the matter should be referred to the DCASR Office of Counsel in accordance with Part 3 with a request for guidance as to the appropriate action to be pursued by the ACO.

(3) For contracts with multiple, low-dollar value shipments, the ACO is authorized to establish a reasonable sampling technique for completing the above review requirements. If such a review technique is adopted, the ACO's rationale and sampling method shall be noted in the contract file.

e. *Refunds.*

(1) In the event duty is assessed and it is subsequently determined by the ACO that the supplies should have been accorded duty-free entry, two copies of the following documentation pertaining to the shipment for which a refund is due will be obtained from the contractor and forwarded to DCASR New York:

a) Bill of Lading or Carrier Certificate and Release Order.

b) Invoice showing defense contract number.

c) Packing List.

d) Customs Form 3461 (Immediate Delivery Application).

e) Completed Customs Form 7501 (Consumption Entry).

(2) ACOs should be aware that proper advance notification to DCASR New York and timely responses to letters of inquiry will preclude the spending of time and effort processing refunds for shipments which are erroneously denied duty-free entry.

f. *Terminated Contracts.* If a contract under which supplies have been imported duty-free is terminated, the contractor may owe duty on part or all of the supplies. ACOs should ensure the TCO (for contracts terminated for convenience) or the PCO (for contracts terminated for default) is advised when supplies have been imported duty-free under a terminated contract. If required, the ACO should furnish the TCO or PCO with copies of the import documents provided to the ACO by DCASR New York.

27 PATENTS

27-1 References

a. FAR 27.2. Patents.

b. FAR/DFARS 27.3 Patent Rights Under Government Contracts.

c. FAR 52.227–8/9/10/11/12/13.

27-2 General. FAR 27.303 provides for the inclusion of one of several patent rights clauses in contracts one of whose purposes is the conduct of experimental, developmental, or research work. The primary responsibility of the ACO in the administration of patent rights clauses is to assure compliance with the invention disclosure and reporting provisions of the applicable contract clauses.

27-3 Description of Contract Clauses

a. *FAR 52.227-8. Reporting of Royalties (Foreign).* This clause requires the contractor to report to the PCO the amount of royalties paid in performance of the contract.

b. *FAR 52.227-9. Refund of Royalties.* This clause is included in contracts when the PCO has determined that circumstances make it questionable whether or not the contractor may have to pay substantial amounts of royalties. The contractor is required to furnish, prior to final payment, a statement of royalties paid or required to be paid in connection with performing the contract.

c. *FAR 52.227-10. Filing of Patent Applications—Classified Subject Matter.* This clause is included in contracts where the work might be expected to result in a patent application containing classified subject matter. Under this clause, before filing a patent application, the contractor is to forward the proposed application to the PCO. If the PCO determines that the patent application contains classified subject matter, the contractor will be provided with instructions relating to the transmission of the application.

d. *FAR 52.227-11. Patent Rights—Retention by the Contractor (Short Form).* For DoD, DoE and NASA, this clause may be included only in contracts with small business firms and nonprofit organizations. Civilian agencies may use this clause in all contracts. The firm or organization retains title to inventions subject to the acquisition of certain specified rights by the Government.

e. *FAR 52.227-12. Patent Rights—Retention by the Contractor (Long Form).* This clause may be included in DoD, DoE and NASA contracts with other than small business firms or organizations. Here also, the firm or organization retains title to inventions subject to the acquisition of certain specified rights by the Government.

f. *FAR 52.227-13. Patent Rights—Acquisition by the Government.* The Government acquires title to patentable inventions subject to the reservation of nonexclusive license rights to the contractor.

27.4 Support of the PCO and Patent Counsel. Because of the specialized legal nature of the provisions of patent rights clauses, the PCO may designate a patent counsel in the schedule of the contract. The ACO shall provide support to the designated patent counsel in such areas as reviews, surveys or audits of the contractor's procedures or records, or obtaining required documents or information from the contractor. If a patent counsel is not designated, the same ACO support shall be provided to the PCO.

27.5 Postaward Orientation Conference (PAOC)/Patent Rights Orientation Letter. If patent rights clauses are to be discussed in a PAOC, the patent counsel should be invited to participate. If a PAOC is not held, and the contractor does not regularly perform under contracts having patent rights clauses, the ACO should issue a patent rights orientation letter. It is required that subcontracts for the conduct of experimental developmental, or research work include the proper patent rights clauses. Accordingly, patent rights orientation letters should also be sent to subcontractors. Patent Rights orientation letters shall:

a. Inform the contractor/subcontractor that the contract/subcontract contains a Patent Rights Clause;

b. Enclose a summary of the principal obligations imposed upon the contractor/subcontractor under the clause;

c. Request the name, title, address, and telephone number of the individual responsible for compliance with the clause requirements;

d. Remind the contractor of his responsibility to obtain all reports and submissions from the subcontractor for forwarding to the ACO. (Exception: Affirmative reports and disclosures that the subcontractor wishes to be withheld from the prime contractor may be submitted directly to the ACO).

27.6 Withholding of Payments.

a. FAR clauses 52.227-12 and -13 contain a withholding of payments provision wherein payments shall be withheld by the ACO if the contractor does not comply with the requirements of the patent rights clauses of the contract. (FAR 52.227-11, which is included in contracts with small business firms, does not contain a withholding provision; nor is a withholding provision applicable to subcontracts.)

b. Final payment shall be withheld by the ACO if patent clearance has not been received from the

PCO/Patent Counsel. When all other prerequisites to final payment have been completed and withholding has extended for more than 30 days beyond the date on which the contractor's final patent report was forwarded to the PCO/Patent Counsel, the ACO should contact the PCO/Patent Counsel for immediate clearance to make final payment.

c. If the contractor fails to establish, maintain, and follow effective procedures for identifying and disclosing subject inventions or fails to provide technical disclosures, interim reports, or subcontractor information, the ACO may at any time before final payment withhold payment as specified in FAR clauses 52.227-12 or -13.

27-7 Contractor/Subcontractor Submissions

a. The patent rights clauses require certain contractor/subcontractor reports and notifications. They should be forwarded via the ACO to the PCO/Patent Counsel. Subcontractor reports and documents are to be submitted through the prime contractor. However, if disclosure of information to a higher tier contractor about a subcontractor's inventions will be to the subcontractor's disadvantage, the subcontractor may submit its report and related documents directly to the ACO. The ACO will review the documents discussed below for administrative sufficiency.

(1) *Invention Disclosure*: FAR clauses 52.227-11, -12 and -13 require complete technical disclosures for each invention to be submitted within 2 months after the inventor discloses it to the contractor personnel responsible for patent matters. Additionally, except for small business firms and nonprofit organizations, the contractor is required to have active and effective procedures to identify and disclose inventions. The contractor should also have records which will document an invention's conception and/or first actual reduction to practice, and the basis for deciding whether an invention is subject to the patent provisions of the contract.

(2) *DD Form 882*: Report of Inventions and Subcontracts. This form is used for submitting "Interim" and "Final" invention reports via the ACO to the PCO/Patent Counsel and for notification to the Government the award of subcontracts containing a "Patent Rights" clause.

(a) *Interim Report.* An interim report is due at least every 12 months from the date of contract award and shall include:

(b) Date of first commercial sale or use.

(c) Gross royalties received by the contractor.

(d) Other data and information requested by the PCO.

(5) *March-in Reports.* When a contractor has acquired title to an invention, the agency shall have the right to require the contractor to grant a license in any field of use to a responsible applicant. A "march in" occurs when the contractor does not grant such a license, and the agency grants the license itself. "March-in" procedures are described in FAR 52.227-11 and -12. Any contractor responses or reports in connection with March-in proceedings received by the ACO should be forwarded immediately to the PCO.

(6) *Request for Retention of Greater Domestic Rights.* For contracts containing FAR clause 52.227-13, requests for retention of greater rights must be submitted at the time of initial disclosure or not later than eight months thereafter unless a longer period is authorized by the PCO.

(7) *Patent Applications, Licenses, and Assignments.* The requirements for contractor submission and/or execution of patent applications and appropriate documentation such as licenses or assignments are identified in the patent rights clauses. Particular attention should be given to contracts containing FAR clauses 52.227-11 and -12 which provide for retention of patent rights by the contractors. ACOs should be familiar with the detailed requirements for filing domestic and foreign patent applications set forth in these clauses to assure timely contractor compliance therewith.

b. To ensure contractor submissions, the ACO shall utilize a suspense system as described in A-600, ACO Alert System. If DD Form 882s are not received within the prescribed time periods, the ACO will follow up within 30 days of the due date. The PCO/Patent Counsel should be provided with an information copy of the follow-up. The ACO will receive an alert annually from the effective date of the contract until it moves to Section 2 of the CAR.

27-8 Abstracts of New Technology (Air Force Contracts Only). Air Force contracts for experimental, developmental or research work usually include an "Abstract of New Technology" clause. ACOs administering such Air Force contracts should be alert to the provisions of this clause since, in addition to his report of subject invention, the contractor is required to submit an abstract of new technology as part of his technical disclosure (see paragraph 27-7a(1) above).

27-9 Infringements. The ACO, upon receipt of notification of any patent infringement, will promptly notify the PCO/Patent Counsel and DLA counsel through the DCASR counsel. The ACO will be responsible for conducting investigations of any such claims to the extent requested by counsel.

27-10 Reporting or Refund of Royalties. ACO responsibilities in administering contracts which include a reporting or refund of royalty clause (FAR 52.227-8 or -9) usually are limited to the following:

a. Prior to consenting to the placement of subcontracts for work to be performed in the United States, its possessions, or Puerto Rico, the ACO is to ensure royalty information required by FAR 27.204-1(b) is forwarded to the PCO/Patent Counsel. ACOs should not withhold consent pending receipt of PCO/Patent Counsel advice.

b. Transmission of the positive royalty reports required by FAR 52.227-8 to the PCO/Patent Counsel.

c. For contracts containing the refund of royalties clause (FAR 52.227-9), the ACO is to ensure the contractor submits his royalty report prior to approving final payment under the contract.

(i) a listing of "Subject Inventions" during the reporting period:

(ii) a certification of compliance with the required invention identification and disclosure procedures, together with a certification of the reporting of all "Subject Inventions", and

(iii) Any required information not previously reported on subcontracts awarded during the reporting period and containing a "Patent Rights" clause.

(When no inventions are developed a negative report will be submitted.)

(b) *Final Report.* A final report is due within 6 months after completion of the contracted work if the contractor is a small business firm or domestic nonprofit organization and within 3 months for all others. It shall include:

(i) A listing of all "Subject Inventions" required by the contract to be reported; and

(ii) Any required information not previously reported on subcontracts awarded during the course of or under the contract and containing a "Patent Rights" clause.

(If no inventions are to be reported, the contractor is to so certify in accordance with FAR 52.227-12 and -13.)

(3) *Subcontract Reports.* FAR clauses 52.227-12 and -13 require the contractor to submit:

(a) A written notice upon the award of any subcontract containing a patent rights clause. This notice shall identify the subcontractor, the applicable patent rights clause, the work to be performed, and the date of award and estimated completion.

(b) A copy of the subcontract upon request.

(c) A negative report, to be included in the final invention report when no subcontracts containing patent rights clauses have been issued under a contract.

(4) *Utilization Reports.* FAR clauses 52.227-11 and -12 require contractors, upon request, to submit periodic reports (no more frequently than annually) on the utilization of a subject invention or efforts being made to obtain such utilization. ACOs should assure timely submission of such reports when they are requested by the PCO and that the reports contain information regarding the status of development of subject invention.

27.4 RIGHTS IN TECHNICAL AND OTHER DATA AND COPYRIGHTS

27.4-1 References

a. FAR 27.4, Rights in Data and Copyrights.

b. DFARS 27.4, Technical Data, Other Data, Computer Software, and Copyrights.

c. DFARS 52.227-7013, Rights in Technical Data and Computer Software.

d. DFARS 52.227-7018, Restrictive Markings on Technical Data.

e. DFARS 52.227-7019, Identification of Restricted Rights Computer Software.

f. DLAM 8400.2, Part 3, Subpart 6.

27.4-2 General. The term "Technical Data" is defined in FAR 27.401. DD Form 1423, is included in all new contracts which require the contractor to furnish technical data and information (hereafter referred to as "data"). The DD Form 1423 lists separately each data item and its scheduled delivery date. This list normally excludes financial reports, cost analyses and other information incidental to contract administration as required by FAR and the applicable Military Department's procurement instructions. The form provides a management tool for use by all functional elements in assuring that all contract provisions pertaining to data are fully satisfied.

27.4-3 Procedures

a. The Quality Assurance element normally will ensure that the contractor understands the data requirements and that he provides the data to be inspected/accepted at source in consonance with contractual requirements. The Production element is responsible to assure delivery of data in accordance with the delivery schedules set forth in the contract.

b. The ACO upon receipt of information from the QAR/IS or Systems and Engineering element that the contractor has not delivered the technical data in accordance with contractual requirements, will review the circumstances pertinent to the unsatisfactory condition and, if appropriate, initiate action under the applicable withholding clause of the contract.

c. When the contract contains a requirement for IPPP data, the Armed Services Production Planning Officer (ASPPO) will serve as the ACO's representative in consulting with industry in development of the data.

27.4-4 Restrictive Markings on Technical Data

For contracts containing the clauses at DFARS 52.227-7018 (Restrictive Markings on Technical Data) or DFARS 52.227-7019 (Identification of Restricted Rights Computer Software), the contractor must establish and adhere to written procedures which ensure that restrictive markings are only used on tech data or computer software when authorized by the "Rights in Technical Data and Computer Software" clause of the contract. In accordance with DLAM 8400.2, Part 3, Subpart 6, the Systems and Engineering element is responsible for surveillance of the contractor's management systems pertaining to restrictive markings on technical data. If the ACO receives information that the contractor is not complying with the procedures governing restrictive markings, he shall promptly take corrective action as specified within the clause at DFARS 52.227-7018.

28.3 CONTRACTOR INSURANCE/ PENSION REVIEW PROGRAM

28.3-1 References

a. FAR 28, Bonds, Insurance, and Indemnification.

b. FAR 31, Contract Cost Principles and Procedures.

c. FAR 42.3, Contract Administration Office Functions.

d. FAR 52, Solicitation Provisions and Contract Clauses.

e. DAR 1-406, Contract Administration Functions.

f. DAR Section VII, Applicable Contract Clauses.

g. DAR Section X, Bonds, Insurance, and Indemnification.

h. DAR Section XV, Contract Cost Principles and Procedures.

i. Applicable Cost Accounting Standards (CAS).

j. DLAM 8105.3, Defense Contract Administration Services Manual for Conducting Contractor Insurance/Pension Reviews.

k. DCAAM 7640.1, Audit Support on CIPRs'.

28.3-2 General

a. The ACO is responsible for identifying contractors eligible for Contractor Insurance/Pension Reviews (CIPRs) and determining contractor compliance with FAR and contract clauses relative to required and other insurance including the types and amounts of coverage, the benefits under pension and other deferred compensation plans, and the allowability of related costs, throughout the life of the contract.

b. Insurance/Pension Specialists (I/PSs) have been established in three regions, Chicago, Los Angeles, and New York, to assist DoD ACOs in their determinations and perform CIPRs. The Chief, Financial Services Division, in DCASRs that do not have I/PS capability, will provide liaison for the CIPR program within the region. DLA is the Executive Agency for performing CIPRs within the Department of Defense.

c. Defense Contract Audit Agency (DCAA) will be requested to assign an auditor as a CIPR team member (see DCAAM 7640.1). Consideration will be given prior audit coverage and data previously developed by other specialists which could contribute to the review effort. Future audits of insurance and pension costs will take CIPR results into account. The contractor will not be given a copy of the CIPR report.

28.3-3 Definition of Terms

a. *Initial CIPR.* This is the initial comprehensive and in-depth review of a contractor's insurance program, pension plans, and other deferred compensation plans, for a contractor who meets the criteria in 28.3-4c, and includes policies, procedures, practices, and costs. The purpose of the review is to determine whether the program and plans are in compliance with FAR and contract clauses, whether costs are allowable, and to make recommendations to the ACO for protection of the Government's interests.

b. *Follow-on CIPR.* This is a biennial follow-on review for contractors who meet the criteria for an initial review and has the same purpose as that review. The scope and depth of this review may be curtailed depending on whether significant changes were made in the contractor's insurance program, pension or other deferred compensation plans, since the last review.

c. *Interim CIPR.* This is a review of selected areas or problems of a contractor's insurance program, pension or other deferred compensation plans, which is made between the biennial reviews.

d. *Special CIPR reviews.* This is a review of a contractor's insurance program, pension or other deferred compensation plans, for a contractor who does not meet the criteria for an initial review, but where significant problems have been identified.

e. *CIPR Support to the Army, Navy, Air Force and Other Government Agencies.* CIPR support to the Army, Navy, and Air Force will be accorded the same priority as reviews of DLA cognizant contractors. CIPRs will be performed at no cost to the Army, Navy, or Air Force. Reviews for other Government agencies will be performed only if resources permit, and the requesting Government agency will be charged for labor hours expended in the review. The hourly rate charged for other Government agency reviews includes normal travel and per diem. Support may be formal or informal. Formal support means an in-plant review of any or all facets of a contractor's insurance/pension plans. Informal support may be answering questions by telephone or a desk review of material forwarded to review when a telephone answer is not adequate.

28.3-4 Procedures

a. *Requests for Reviews.* ACOs in DCASRs New York, Boston, Philadelphia, and Atlanta will request reviews from the I/PS at DCASR New York. ACOs in DCASRs Chicago, Cleveland, St. Louis, and Dallas will request reviews from the I/PS at DCASR Chicago. ACOs in DCASR Los Angeles will request reviews from the I/PS at DCASR Los Angeles. Requests from ACOs in other than DCASRs New York, Chicago, and Los Angeles will be made through the Chief, Financial Services Division of their DCASR.

b. *Reviews for Army, Navy, Air Force and Other Government Agencies.* Requests for reviews from the Army, Navy, Air Force or other Government agencies will be submitted direct to the Financial Services Division at DCASRs New York, Chicago, or Los Angeles based on the geographical location of the contractor.

c. *Selection of Contractors and Type of Review.* In order to obtain the maximum benefits from the CIPR program, an initial CIPR will be made for contractors who have actual or anticipated annual sales to the Government of $10 million or more on negotiated prime contracts and subcontracts issued under Government prime contracts. A follow-on CIPR will be made for contractors meeting the aforementioned dollar criteria biennially from the date of the initial review. However, the ACO may waive the requirement for a biennial follow-on CIPR if the review is not considered necessary, cost effective, nor to involve material cost. (See 28.3–5a(9).) Interim reviews will be performed as required within the biennial cycle to assist in resolving problems that are significant and warrant attention prior to the next follow-on review. In such cases the follow-on review cycle may be restarted from the date of the interim review depending upon the scope and depth of the interim review. Special reviews will be made as required.

d. *Team Concept.* A team concept will be used for all initial, follow-on and interim reviews, and may be used for special reviews when appropriate. The team will be headed by the I/PS, as the team captain, and the team membership will be tailored to fit the circumstances involved. Normally, the team will consist of the I/PS, the cognizant auditor, and the other specialists who could contribute to the review effort. The cognizant auditor may be requested to participate in special reviews when appropriate. The team captain will have the overall responsibility for assigning the work to the team members, developing a complete report, and making recommendations to the ACO. In making these arrangements, consideration should be given to prior audit coverage.

e. *Multidivisional Contractors.* Usually, with a multidivisional contractor, the administration of the insurance program, pension, and other deferred compensation plans is performed at corporate headquarters where comprehensive records are maintained and from which costs are allocated to divisions. Therefore, for the purpose of conserving time and effort, reviews should be conducted, whenever possible, at the contractor's corporate headquarters. If a CACO is assigned, it is the CACO's responsibility to request such reviews. Where a CACO has not been appointed pursuant to FAR 42.6, the DCASR having geographical cognizance over corporate headquarters will be requested to assign an ACO to perform ACO functions relative to the corporate review. Reviews may also be conducted at divisional levels for divisions having a substantial amount of Government work. This would occur, for example, when the division administers its own insurance program, pension, or other deferred compensation plans or parts thereof. Additionally, a divisional level review would be appropriate when there are questions regarding the allowability of costs on Government contracts which have been allocated by the corporate office to the division. In such instances the ACO cognizant of the specific division would be responsible for requesting the review. Generally, before a divisional review is requested, the corporate headquarters' review should have been completed and available for reference by the I/PS making the division review. When the I/PS receives requests for reviews either at the contractor's corporate office or division, and the location of such office is outside the geographical area serviced, the request shall be referred to the Contractor Insurance Branch having cognizance over that location. Where a CACO has been appointed, all actions taken by divisional ACOs should be coordinated with the CACO.

28.3–5 Responsibilities

a. *Administrative Contracting Officer*

(1) The ACO, in coordination with the I/PS and DCAA, will notify the contractor that a CIPR is to be conducted and request from the contractor or request the contractor to prepare such information as may be needed by the I/PS. This information will include the following as a minimum:

(a) A complete schedule and copies of all insurance contracts carried under the contractor's insurance program.

(b) Copies of pension and other deferred compensation plans, and related data.

(c) All related cost information such as computation of group insurance costs including reserves, retrospective rated plans, and contributions to pension funds supported by the actuary's and trustee's reports.

(2) Upon receipt of the CIPR report, the ACO should discuss with the I/PS any recommendations that require clarification. If the review indicates satisfaction with the report and its recommendations, the ACO will forward the recommendations to the contractor and request an early reply. Upon receipt of the contractor's reply, the ACO will transmit a copy to the I/PS with appropriate comments. The ACO should discuss the contractor's response with the I/PS promptly in order to determine the final recommendations to be submitted to the contractor. The ACO's final decision should be documented in a memorandum, copies of which should be forwarded to the I/PS and to the Chief, Financial Services Division, in those DCASRs that do not have an I/PS.

(3) Forward copies of the CIPR report to the CACO and ACOs cognizant of other divisions of the contractor.

(4) As appropriate, the ACO should issue a "Notice of Intent to Disallow or Not Recognize Costs" (see Part 42.801) or direct DCAA to issue a DCAA Form 1 for suspension or disallowance of costs. If the notice issued by the ACO is for indirect costs it should be coordinated with the auditor.

(5) Actions taken, including status of costs challenged and savings achieved, should be forwarded to the I/PS with a copy to the Chief, Financial Services Division for those DCASRs that do not have an I/PS.

(6) As received, the ACO will forward to the I/PS, with appropriate comments, copies of all audit reports completed subsequent to the CIPR report, which contain coverage relating to insurance, pension, or other deferred compensation costs. A copy of such reports and comments shall also be forwarded to the Chief, Financial Services Division, for those DCASRs that do not have an I/PS.

(7) Also as received, the ACO will forward to the DCAA auditor, with appropriate comments, copies of all CIPR-related correspondence pertaining to areas of DCAA involvement.

(8) The I/PS, in coordination with the ACO, will prepare and maintain a list of contractors with defined benefit plans. A copy of the list and any changes thereto shall be provided to the ACO. This list will include the following as a minimum:

(a) Contractor name and address.

(b) Status of contractors' pension plan funding for each pension plan in which the Government participates (i.e., fully funded, overfunded, or underfunded).

(c) The approximate surplus for each overfunded pension plan and the effective date of such determination.

(d) Status of pension plan advance agreements for pension plan full funding limitations and terminations.

(9) The ACO may waive the requirement for a follow-on CIPR in accordance with 28.3-4c. The waiver will include justification why the review is not considered necessary, cost effective, nor to involve material cost, and be submitted to the Chief, Financial Services Division, of the Region responsible for performing the review. A copy of the waiver will be provided to the Chief, Financial Services Division, of the ACO's cognizant DCASR. The waiver will be for one year and may be reissued.

b. *Chief, Contractor Insurance Branch*

(1) Maintain a register of contractors eligible for the CIPR program, update annually as of 30 September with a copy of the annual update to HQ DLA, ATTN: DLA-AF. This reporting requirement is exempt from RCS control in accordance with DLAR 5000.12, Management and Control of DLA Information Requirements, Encl 2, paragraph IV.A.

(2) Prepare and maintain a schedule of CIPRs to be performed during the next 12 months.

(3) Establish and maintain a register of CIPRs, DLA Form 1340, by Region which will reflect the status and results of the program, including a log of formal reviews performed for the Army, Navy, Air Force and other Government agencies. This log will show, as a minimum, the following information:

(a) Requestor and date of request for a review.

(b) Date request was received.

(c) Case number.

(d) Name of contractor and location.

(e) Type of review; i.e., initial, follow-on, interim, special, formal, or informal.

(f) Date review scheduled.

(g) Date review completed.

(h) Date of report to requester.

(i) Staff hours used.

(j) Costs challenged and category (e.g., insurance, pension, etc.).

(k) Cost savings/avoidance accomplished and category.

(l) Final close date.

(m) Remarks.

(4) Forward quarterly to the Chief, Financial Services Division, of those DCASRs that do not have I/PS capability, a copy of their respective Region log.

(5) Schedule CIPRs for Army, Navy, Air Force and other Government agencies. Reviews for other Government agencies are subject to the availability of resources and will be done at the current staff hour reimbursement rate, which includes normal travel and per diem charges. Actuarial services on non-DoD reviews which are authorized by other Government agencies are also reimbursable.

(6) Recommend to the ACO, through the Financial Services Division Chief, if waiver of a scheduled follow-on CIPR is warranted. The recommendation to waive a biennial CIPR for one year will be written and fully justified as considered not necessary, cost effective, nor to involve material cost. A copy of the recommendation will be provided to the Chief, Financial Services Division, at the DCASR having cognizance of the ACO.

(7) In accordance with the DLAM 8105.3, Defense Contract Administration Services Manual for Conducting Contractor Insurance/Pension Reviews, review and assure that work papers, documents, and files are complete and supportive of the findings, conclusions, and recommendations in the CIPR reports.

(8) Review and approve all CIPR reports.

(9) Distribute CIPR reports in accordance with paragraph 28.3-8, Distribution of Review Reports.

(10) Establish and maintain a record to monitor and assure that the Government receives credits for insurance or deferred compensation costs resulting from agreements with contractors to defer credits over a period of time. Prior to the end of the contractor's fiscal year in which the credit is to be given to the Government, the Chief, Contractor Insurance Branch, will send the cognizant ACO a letter requesting information as to when the credit was given, the amount of the credit, and how the credit was given to the Government. If a credit is due the Government for the following fiscal year, this letter shall remind the ACO of the amount of credit due the Government.

(11) In the event of a pension plan termination, assist the ACO in obtaining an immediate credit or immediate cash refund in the contractor's current fiscal year for current and prior year adjustments which equal the Government's total equitable share.

(12) Assure adequate training of the I/PSs.

c. *CIPR Team Captain.* The Chief, Contractor Insurance Branch, selects the CIPR Team Captain who is responsible for the overall conduct of the review in accordance with 28.3-4d, Team Concept. The I/PS, as CIPR Team Captain, in addition to having basic knowledge of all types of insurance and pension/deferred compensation plans, must coordinate the skills of other specialists in the conduct of each CIPR because DLA administers contracts for every conceivable commercial product and service, plus many types of specialized military products and services. The cognizant auditor, CAS monitor, Contractor Employee Compensation System Review Specialist, consulting actuary, and other specialists who could contribute to the review effort are given specific assignments by the I/PS as Team Captain. The prereview agenda will include meetings with the DCAA auditor and others to define and assign review responsibilities to fit the circumstances involved. The DCAA auditor will generally be requested to verify recorded costs since the auditor has general access to contractor books and records. To avoid duplication of effort, DCAA will utilize CIPR reports and recommendations in performing reviews of incurred costs associated with establishment of final overhead rates. This will assure that proper technical and professional expertise are utilized in evaluating property and liability, workers' compensation, and group insurance as well as pension and other deferred compensation costs. In addition, the CIPR Team Captain will also have the following responsibilities:

(1) Develop and obtain supervisory approval of a CIPR plan prior to commencing a review.

(2) Conduct the CIPR in consultation and discussion with the contractor's insurance manager and the pension plan (and other deferred compensation plans) administrator. This will include a review of all insurance contracts, pension plans, and other deferred compensation plans and related policies, procedures, practices, and cost data, as needed, to reach the following general determinations:

(a) That insurance coverages are in compliance with contract clauses and the FAR.

(b) That pension and other deferred compensation plans are in compliance with contract clauses and the FAR, and have Internal Revenue Service approval as required.

(c) That the contractor's practices are the same as stated in the CASB Disclosure Statement, Part VII—Deferred Compensation and Insurance Costs.

(d) That the contractor is in compliance with CAS 412—Composition and Measurement of Pension Cost, CAS 413—Adjustment and Allocation of Pension Cost, CAS 415—Accounting for the Cost of Deferred Compensation, CAS 416—Accounting for Insurance Costs, and any other applicable CAS.

(e) That related costs are allowable, allocable, and reasonable under Government contracts.

(f) That the allocation of related costs from the Corporate Office to operating elements and/or operating elements to contracts is equitable to the Government. As an example, aircraft products liability insurance is frequently quoted as one combined rate for commercial and military coverage. Historically, claims experience for military products has been more favorable than commercial products; therefore, the cost for military coverage should be less. Contractors should be requested to obtain separate rates from their insurers. Only the cost of military products liability should be allocated to Government contracts.

(3) Prepare and sign the CIPR report in accordance with 28.3-7 and submit to the Chief, Contractor Insurance Branch, for approval.

(4) As requested, prepare a draft letter for the ACO's signature to transmit the CIPR results to the contractor. The statement at 28.3-7 1. shall be included in the subject draft letter for the ACO.

(5) Prepare the documentation for the ACO's position to disallow the costs when an ACO initiates a "Notice of Intent to Disallow or Not Recognize Costs."

(6) Evaluate the contractor's response to the CIPR findings forwarded by the ACO and advise the ACO as necessary.

(7) Review the contractor's insurers to determine whether they qualify for approval. When reviewing foreign captive insurers, where no official rating information is available, obtain and consider all available financial information such as capital, surplus, reserves, and reinsurance arrangements to

determine whether the captive appears to be financially sound to qualify for approval.

d. *Chief, Financial Services Division.* The Chief, Financial Services Division, in those DCASRs that do not have an I/PS, will be the contact point to provide assistance in expediting the administration of the CIPR program within DCASR by:

(1) Obtaining and forwarding to the cognizant Contractor Insurance Branch names, addresses, and sales dollars of contractors in the DCASR meeting the criterion for initial, follow-on, interim, and special reviews.

(2) Maintaining liaison with the cognizant ACO and I/PS for the purpose of making arrangements for reviews, and obtaining preliminary and follow-on information as needed by the I/PS.

(3) Arranging and maintaining liaison with the cognizant DCAA auditor and other team participants for reviews of contractors within the DCASR.

(4) Maintaining a file of the quarterly logs forwarded from the I/PS pursuant to 28.3-5b(4).

28.3-6 Insurance Approvals

FAR 28.307-1 requires that group insurance plans under cost reimbursement contracts shall be submitted for approval to the Director, Contract Administration, DCASR New York (DCASR NY-A), DCASR Chicago (DCASR CHI-A), or DCASR Los Angeles (DCASR LA-A), as appropriate. Requests for approval shall be submitted through the appropriate I/PS to the cognizant Director, Contract Administration. Changes in benefits provided under an approved plan that can reasonably be expected to increase significantly the costs that are being charged to the Government shall be submitted as provided above for approval. The FAR assigns approval authority to the Deputy Director (AM), DLA for the Defense Department Group Term Insurance Plan (DFARS 28.307-1) and the National Defense Projects Rating Plan (DFARS 28-304). Accordingly, requests for approval of these plans shall be submitted by the ACO through the I/PS to HQ DLA, ATTN: DLA-AF.

28.3-7 Report Format

The CIPR report will be addressed to the ACO and prepared by the I/PS in accordance with the DLAM 8105.3, Defense Contract Administration Services Manual for Conducting Contractor Insurance/Pension Reviews using the following general format:

a. Name and address of requester.

b. Persons participating or contacted in the review effort.

c. Contractor's name and address.

d. General comments including purpose of review, time and place of review, and pertinent references.

e. Brief history of company, organization, principal products.

f. For each of the two CIPR years the actual annual sales volume under commercial contracts, Government prime contracts and subcontracts issued under Government prime contracts, together with the percentage relationship to total sales. Sales volume under Government contracts will be segregated by the Military Service or agency issuing the prime contract and by type of contract or subcontract. Also, FFP Government sales will be segregated by competitive and negotiated.

g. Comments, findings, and recommendations resulting from the review of all insurance contracts including group insurance and self-insurance plans. Enclosures should be attached as appropriate, giving specific information on each insurance contract and self-insurance plan such as, name of insurer and policy number, coverage and limits, term, and related cost information including rating plan, premium, experience, refunds, dividends, other credits and reserves.

h. Comments, findings, and recommendations resulting from a review of all pension and other deferred compensation plans. Enclosures should be attached as appropriate, giving specific information on each plan such as type of plan, name of trustee or insurer, cost exhibits, including trustee's and actuary's statements, benefits provided and qualifications for participation and vesting, method of recognizing unrealized appreciation, other pertinent cost information, and IRS approval.

i. Recommendations for approval or acceptance of a contractor's pension plan and other deferred compensation plans or a contractor's insurance program shall not be made. However, recommendations may be made for approval of insurance as authorized in FAR Parts 28 and 31, and applicable contract clauses.

j. A summation of the overall review including, but not limited to, rating of insurers, compliance with FAR and contract clauses, and other information which will provide a general overview of the results of the review.

k. Review reports will be signed by the team captain and approved as necessary.

l. All DLA system review reports shall include the statement "THE GOVERNMENT IS NOT PRECLUDED FROM QUESTIONING ISSUES OR COSTS WITHIN THE SYSTEM REVIEWED, NOTWITHSTANDING THE STATUS OF THE CONTRACTOR'S SYSTEM OR THE RESULTS OF THIS REVIEW."

m. All review reports shall be marked "FOR OFFICIAL USE ONLY."

28.3-8 Distribution of Review Reports

a. For reviews of DLA cognizant contractors, the I/PS will distribute the original report to the ACO, or CACO, together with copies for distribution to ACOs cognizant of other divisions of the contractor. In addition, the I/PS will distribute a copy to the Chief, Financial Services Division, of each Region having cognizance of a contractor division for the information of Overhead and CAS Specialists, Price/Cost Analysts, the cognizant DCAA auditor, the other Contractor Insurance Branches, and HQ DLA, ATTN: DLA-AFS. The contractor will not be given a copy of the review report.

b. For reviews performed for the Army, Navy, Air Force, and other Government agencies, the I/PS will distribute the report in accordance with the requester's instructions, with a copy to HQ DLA, ATTN: DLA-AFS.

28.3-9 Filing

A copy of all review reports and related documentation will be filed and maintained in the official contract file when pertaining to a specific contract or in the contractor's miscellaneous file folder when not limited to one contract.

28.4 GUIDELINES FOR ACO REVIEW OF CONTRACTOR INSURANCE/PENSION PROGRAMS

28.4-1 References

a. FAR 28, Bonds, Insurance, and Indemnification.

b. FAR 31, Contract Cost Principles and Procedures.

c. FAR 42.3, Contract Administration Office Functions.

d. FAR 52, Clauses and Provisions.

e. DAR 1 406, Contract Administration Functions.

f. DAR Section VII, Contract Clauses (applicable clauses).

g. DAR Section X, Bonds, Insurance and Indemnification.

h. DAR Section XV, Contract Cost Principles and Procedures.

28.4-2 Purpose. To provide guidelines to contracting officers for the review of contractor insurance/pension costs when the contractor has significant insurance/pension costs charged to flexibly priced contracts but does not qualify for a formal insurance/pension review.

28.4-3 General. There are two occurrences which can alert the ACO to potential problems. They are:

a. Contract terminations may result in significant changes in plant population. In this situation, there can be termination gains in the pension funds due to abnormal forfeitures entitling the Government to credits. If the contractor has experience-rated liability insurance and/or group insurance, there also could be refunds due from the insurers that should be passed on to the Government.

b. Merger, divestiture, or acquisition require particular attention to the following:

(1) Dilution of credits due from experience-rated insurance policies such as worker's compensation and group insurance.

(2) Equitable division of pension fund assets in a divestiture.

(3) Mergers of pension funds may dilute a pension fund surplus or distribute an unfunded liability inequitably.

28.4-4 Specific Information. Paragraph 28.4-6 is a suggested sample letter that can be sent to the contractor to obtain data to be used by the ACO for analysis of the contractor's insurance/pension program and costs. Suggested analysis techniques of the data received from the contractor are described below.

a. Certificates of Insurance should be tested for required coverages (see FAR 28.307-2 (a) through (e).

b. If the contractor's "Other Government" sales amount to $10 million or more, the information should be sent to the cognizant DLA insurance/pension element and an insurance/pension review requested (refer to Part 28.3).

c. Compare the annual cost of property and casualty insurance, group insurance, and pensions to annual payroll costs. As a general rule, anything in excess of the following should be cause for further analysis:

Property and Casualty Insurance (Includes Workers Compensation and Employers Liability Insurance, Product Liability Insurance, Aircraft Products Liability Insurance and Other Property and Casualty Insurance)	2%
Group Insurance	6%
Pensions	8%

d. Certain self-insurance programs require ACO approval (FAR 28.308). The cost of self-insurance should be based on claims paid plus a reasonable reserve for unpaid claims, but in no case should the cost exceed the cost for similar purchased insurance.

e. If the contractor has a captive insurance company (foreign or domestic), analyze the available financial information on the captive to determine whether the captive is financially able to absorb the risk insured.

f. If the contractor has earned group insurance dividends, refunds, or credits, compare the amounts to the cost of the insurance. If such dividends, refunds, or credits exceed 10 percent of the cost of insurance, it is an indication that the insurance charges are excessive and should be analyzed further.

g. If the group insurance program includes a reserve for retired lives in excess of 10 percent of the group insurance cost, further analysis should be performed to assure such cost is allocable to Government contracts.

h. Aircraft products liability insurance cost is considerably greater for commercial aircraft than military aircraft. Therefore, if the amount of such insurance cost charged to Government contracts is significant, efforts should be made to assure that the rate charged for military products is less than for commercial products. As a general rule, the commercial rate should be not less than four times higher than the military rate.

28.4-5 Procedures

a. The data required by the sample letter (28.4-6) should be obtained every 2 years from contractors with significant insurance/pension costs charged to flexibly priced Government contracts not qualifying for a formal insurance/pension review.

b. If the ACO desires assistance in evaluating the contractor's data or determines that an in-depth review of certain areas or elements is warranted, assistance should be requested from the cognizant insurance/pension branch (DCASR New York, Chicago, or Los Angeles). Formal requests should be submitted through the Region Financial Services Division Chief. This is not intended to restrict informal telephone communication direct with the cognizant insurance/pension specialists.

c. After any corrective action is accomplished, the contractor's data and ACO's analysis should be filed for reference and used for comparison in subsequent reviews.

28.4-6 Sample Letter. The following sample letter may be used to secure insurance/pension data from contractors not in the DLA formal review program:

Sample Letter. To be prepared on local letterhead

28.4-6

TO: (Contractor name and address)

To assist the Government in the evaluation of your insurance and pension costs and/or requirements, the following information is requested to be submitted to the undersigned by (Date)

1. Casualty Insurance. Copies of Certificates of Insurance, including policy dollar limits, for the following insurance coverages (FAR 28.307-2 (a) Through (e)):

   a. Workers Compensation Insurance and Employers Liability Insurance.
   b. Comprehensive General Liability Insurance.
   c. Comprehensive Automobile Insurance.
   d. Aircraft Liability Insurance (if applicable).
   e. Vessel Collision Liability and Protection and Indemnity Liability Insurance (if applicable).

2. The above policies should contain a special endorsement to the effect that if the policy is cancelled or materially changed, the insurance company will provide the cognizant ACO 30 days advance notification prior to such cancellation or change. If the Certificates of Insurance do not contain this language, provide copies of the endorsements. Also furnish the name, address, and title of the official responsible for general insurance who may be contacted for consultation.

3. Total costs for the following, excluding employee contribution, where applicable:

	Prior FY	Estimate Current FY
a. Workers Compensation Insurance and Employers Liability Insurance		
b. Product Liability Insurance		
c. Aircraft Products Liability Insurance		
d. Other Property and Casualty Insurance		
e. Employee Group Insurance		
f. Pension Plans		
g. Profit Sharing Plans		
h. Thrift Plans		
i. Savings Plans		
j. Stock Purchase/Option Plans		

4. Sales (in thousands):

	Prior FY	Estimate Current FY
a. Commercial		
b. Government Firm Fixed Price Competitive (including FFP competitive subcontracts under Govt. prime contracts)		
c. Other Government (including subcontracts under Govt. prime contracts)		
TOTAL SALES		

5. Total payroll (direct and indirect wages and salaries):
Prior FY ______ **Estimate Current FY** ______

6. If you have a program of self-insurance for any liability or property insurance, or employee benefits, please identify and show cost.

7. If you have a captive insurance company, please identify the company and coverages insured with the captive or indirectly through another insurance company. Include costs of such insurance.

8. Identify any group insurance dividends, refunds, or credits earned during the past 2 policy years by category and dollar amount.

9. If your group life insurance program includes a reserve for retired lives, identify the amount and the annual group life insurance premium. Should you have any questions regarding this request, contact the undersigned, telephone ______

(signed) ACO

29 TAXES

29-1 References.

a. FAR 29, Taxes.
b. DFARS 29, Taxes.
c. DAR Section XI, Taxes.

29-2 Policy. FAR and DFARS 29 provide general information and instructions for application and use of the tax clauses (FAR 52.229-1 through -9 and DFARS 52.229-7000). (Contracts containing DAR clauses 7-103.10(a) through (e) and 7-204.24(a) and (b) should be administered in accordance with DAR.) DoD policy as it applies to taxes imposed by the various levels of Government is to take maximum advantage (when it is economically feasible to do so) of all applicable tax exemptions accorded the Federal Government.

29-3 Procedures

a. *Administration of Tax Provisions*

(1) Tax problems which may confront the ACO are often complicated and require legal evaluation. ACOs should consult with DCASR counsel who may coordinate with the tax counsel for the procuring activity or with Counsel, DLA (DLA-G) in resolving tax problems.

(2) In addition, the ACO will refer all matters requiring negotiation with tax authorities to the PCO. Such matters include disputes concerning the validity, application, exemption, or refunds of any tax. A complete summary of facts and pertinent documents will be provided the PCO.

(3) The responsibilities of the ACO are discussed below:

(a) *Fixed-Price Type Contracts.* The administration of tax provisions under fixed-price contracts is concerned primarily with increases or decreases in contract price resulting from modifications in statutes, court decisions, rulings, or regulations effective after the contract date. The ACO will evaluate any such proposed adjustments and will forward his recommendation to the PCO.

(b) *Cost-Reimbursement Type Contracts.* In the administration of cost-reimbursement type contracts, the final determination as to allowability of taxes is the responsibility of the ACO. This determination is made in conjunction with the allowability of total costs under the contract and when determined necessary can be coordinated with the price analyst, contract auditor, and legal counsel.

b. *Tax Exemptions Available to the Government.* While there are many tax exemptions available to the Federal Government, ACOs are primarily involved in those involving exported supplies and purchases of alcohol. Procedural guidance for obtaining these tax exemptions is provided.

(1) *Exported Supplies*

(a) Exported supplies are exempt from both retailers' and manufacturers' excise taxes. However, proof of exportation must be furnished the contractor to enable him to use this exemption.

(b) The IRS has approved a simplified procedure for use by DCAS offices in providing proof of export to contractors performing under DoD contracts. Under this procedure, a DD Form 250, Material Inspection and Receiving Report, GBL or CBL bearing a certification (typed, rubberstamped, or otherwise shown) executed by the official who dispatches the shipment is acceptable as proof of export for IRS purposes.

(c) As all the information required to provide proof of export is normally available to the TO, this certifying and executing function will be the responsibility of the TO cognizant of the plant from which the shipment originates. The TO will assure that the following statement is shown on the applicable invoice/shipping document for shipments scheduled for export: "I certify that the articles listed on this document were exported in due course prior to use or further manufacture and prior to resale in the United States other than for export." A copy of the form bearing the certification will be forwarded to the prime contractor for use as proof of export for tax purposes.

(d) In cases of lost or destroyed shipments, the ACO, upon receipt of such information from the TO, will assure that the contractor's records are adjusted to reflect a reduction in the number of articles subject to excise tax exemption. Additionally, the ACO should coordinate with the PCO to assure the contract price is adjusted accordingly.

(2) *Purchases of Alcohol*

(a) Alcohol required for use of the Department of Defense may be purchased tax free by furnishing a permit from the Director, Bureau of Alcohol, Tobacco, and Firearms, to the contractor who furnishes the alcohol. Authority to obtain and issue Permit Forms 1444 and 1486 has been granted the Commander, DCASR, New York who has redelegated this authority to the Director of Contract Management. Additionally, the Commander or the Director, Contract Management, serves as the point of contact with the Director, Bureau of Alcohol, Tobacco, and Firearms.

(b) When an ACO is assigned administration of a contract which calls for the procurement of alcohol, he will:

1. When requested by the contractor, request the Commander, DCASR, New York, ATTN: DCASR-NY-A, to furnish the required permit.

2. Submit the permit to the contractor who keeps the permit until all deliveries of alcohol under that contract have been completed.

3. Assure that contractor returns his permit upon contract completion and transmit the permit to DCASR, New York.

30 COST ACCOUNTING STANDARDS (CAS)

30-1 References

a. FAR 42.3, 15.811, 15.808, 30.0, 52.230-3, 31.0, 4.2, 52.230-4, 52.230-5, 52.230-6.

b. DFARS 30.0.

c. 4 CFR, Parts 300 and 400. (Pertinent administrative portions reprinted as DAR Appendix O.)

d. DoD 4105.59-H, DoD Directory of Contract Administration Services Components.

30-2 General

Public Law 91-379 provided for promulgating Cost Accounting Standards aimed at achieving uniformity and consistency in the cost accounting practices used by defense contractors and subcontractors.

a. *Applicability*

(1) *Contracts.* The CASB standards are applicable to all negotiated national defense contracts in excess of $100,000 except when the price negotiated is based on established catalog or market prices or prices set by law or regulation or it qualifies for one of the exemptions cited in 4 CFR 331.30(b) (see FAR 30.201-1.)

(2) *Contract Modifications.* As a general rule, a contract modification will not affect the status of the contract with respect to CAS application.

(a) If a negotiated contract is priced below the CAS threshold but includes an option that when added to the initial requirement, would exceed the CAS threshold ($100,000 or $500,000 as the case may be), the contract is subject to CAS at the outset because it contemplates a total requirement in excess of the CAS threshold.

(b) An exception to this rule can occur when a contract is being modified to increase *quantities* under an option clause. If, on a non-CAS covered contract, the option quantity is increased *beyond* that provided for in the option clause and the negotiated price of that increased portion exceeds the CAS threshold, CAS will apply to that portion since the additional increment was not contemplated under the original contract.

(3) *Letter Contracts.* CAS is applicable to letter contracts as of the date of award unless they are otherwise exempt from CAS requirements. Since the CAS clause requires compliance with all Standards in effect on date of award, the definitization, i.e., modification, of a letter contract will not activate any new Standards.

(4) *Basic Ordering Agreements.* Each order under a BOA is considered as a separate, individual contract when determining CAS applicability. If the CAS threshold is reached and the negotiated order or contract is not otherwise exempt, CAS will apply.

(5) *Subcontracts.* FAR 30.203 contains the policy subcontract disclosure statements, and provides criteria for deviations therefrom.

b. *Modified Contract Coverage*

Modified coverage requires compliance with Standards 401, 402 and the Disclosure Statement requirements. (See FAR 30.201-2.)

c. *Extension to FAR 31.0*

In implementing the rules, regulations, and CASB Standards, DoD has determined that contractor accounting practices must additionally comply with FAR 31.0. However, when such practices are inconsistent with provisions of FAR 31.0 section XV, they should not be reported as noncompliances with CAS. Rather, excess costs resulting from such inconsistency should be disallowed in accordance with existing procedures for processing failures to comply with FAR 31.0 cost principles.

d. *Extension to Federal Agencies (other than DoD)*

The CASB rules, regulations and Standards are binding upon *any* Federal agency making, reviewing, or approving a national defense acquisition. With the exception of Disclosure Statement requirements, the Federal Procurement Regulation (FPR) extends CAS applicability to *nondefense* contracts. However, applicability of a particular Standard to negotiated nondefense contracts may be limited by a modification or withdrawal of applicability as set forth in paragraph 1-3.1218 of the FPR.

e. *Cognizant ACO*

For every DoD contract or subcontract containing the CAS clause, there is an ACO cognizant of the contractor. When there are DoD contracts or subcontracts that contain the CAS clause, the ACO cognizant of the contractor will be determined by consulting DoD 4105.59-H. The cognizant ACO, regardless of agency, will administer the CAS requirements for all Government agencies.

30-3 CAS Administration Responsibilities. The administration of CAS requires close coordination and cooperation among Contract Administration and Financial Services personnel. While the ACO has the ultimate responsibility for performing the CAS functions identified in FAR 42.202 and FAR 42.302 through (1xii), the Price/Cost Analyst is responsible for providing advice and technical support. Upon receipt of CAS-related actions, the ACO will request the Financial Services element to conduct a review and evaluation of the CAS matters and provide assistance to the ACO in administering the CAS provisions.

30-4 Functional Responsibilities. Major functional responsibilities in the administration of CAS include:

a. *ACO* (1) Determine adequacy of prime contractor's Disclosure Statement.

(2) Determine compliance of the Disclosure Statement with FAR and CASB rules, regulations and Standards and with disclosed or established practices.

(3) Review and approve contractor accounting change proposals and any Disclosure Statement revisions related thereto.

(4) Determine contractor compliance with CAS Standards and Disclosure Statements.

(5) Negotiate impact of changes or noncompliances as related to CAS-covered prime and subcontracts.

(6) Execute supplemental agreements related to prime contracts.

(7) Request assistance from the regional CAS Specialist when a CAS issue(s) cannot be resolved by the ACO and the CAO pricing team. Such requests will be made through the Chief, Financial Services Division.

b. *Price/Cost Analyst*

(1) Maintain thorough familiarity with the CASB's rules, regulations and Standards.

(2) Review Disclosure Statements for use in performing proposal review and evaluations.

(3) Establish agreements with audit, as required, to assure timely submission of CAS-related audit reports.

(4) Issue pricing reports to assist the ACO in determining Disclosure Statement adequacy and contractor compliance/noncompliance.

(5) Review and evaluate cost impact proposals.

c. *Regional CAS Specialist*

(1) Each DCASR shall designate at least one CAS Specialist to serve in a staff advisory capacity for the CAS program within that Region.

(2) The functions to be performed by the CAS Specialist include the following:

(a) Provide technical guidance, interpretations and information related to the CAS program to ACOs, price analysts, system analysts, Boards of Review and DCASR management personnel.

(b) Determine local and formal training needs related to the CAS program and provide and participate as required.

(c) Serve as focal point for resolution of problems regarding CAS implementation including advising on the need for escalation of problems.

(d) Provide liaison with HQ DLA, other DCASRs and DCAA offices on matters relating to the CAS program.

(e) Perform an annual review of the CAS function at each CAO to determine if the program is being administered in accordance with existing policy and guidance.

30-5 CAS Interpretations/Guidance. (See 30-15 below) Questions regarding CAS interpretation, implementation or administration which cannot be resolved at the DCASR level will be referred in writing to HQ DLA (DLA-A) through command channels. The issue requiring policy guidance should contain the following information:

a. A description of the issue including the ACO's position, the contractor's position, and appropriate CAS references.

b. The Region's analysis and recommended position.

c. The pools or bases in which the disputed item is recorded.

d. The amount of costs involved, by year if appropriate.

e. The percentage of cost allocated to Government contracts by year.

30-6 Disclosure Statements

a. *Disclosure Statement Filing Requirements*
Filing requirements are discussed in FAR 30.201-1(b).

b. *Initial Determination of Adequacy*

(1) Prime contractors are required to submit the original and one copy of their Disclosure Statements to their cognizant ACO and concurrently one copy to their cognizant DCAA auditor. The ACO will forward a copy to the Financial Services element of the CAO. A DLA Form 1602, CAS Disclosure Statement Control Register, will be established by the ACO to monitor review action.

(2) Upon receipt of the Disclosure Statement, the auditor will commence the adequacy review in accordance with FAR 30.202-7(a). If the Disclosure Statement is submitted in connection with a proposal, the audit report on adequacy will be provided to the ACO as soon as possible but ordinarily no later than the date of the submission of the audit report on any related price proposal. When the contractor submits a Disclosure Statement which is not related to a specific pricing proposal, the ACO, through the Financial Services element, should establish with audit agreement a date for submission of the audit report.

(3) When the ACO determines a Disclosure Statement to be adequate, he will so notify the contractor in writing. A copy of the notification shall be sent to the auditor, the Financial Services element, the CACO or ACO assigned corporate responsibility, and, when applicable the concerned PCO(s).

(4) When the ACO determines that the Disclosure Statement is inadequate, he shall identify in writing the areas of inadequacy to the contractor, request a revised Disclosure Statement, and advise the auditor, the Financial Services element, the CACO or ACO assigned corporate responsibility, and when applicable, the concerned PCO(s) of the action taken by providing each a copy of the written notice to the contractor.

(5) Contracts may not be awarded until the Disclosure Statement has been determined adequate. Therefore, the adequacy determination should bemade as soon as practicable to avoid unnecessary delays in the procurement process.

c. *Initial Compliance Review.* Subsequent to the adequacy review, the auditor performs a more detailed review of the Disclosure Statement to ascertain whether the disclosed practices are in compliance with CAS and with FAR 31.0. This review is usually accomplished within 60 days of the adequacy review. In most cases the ACO will be advised of audit findings only in the event a noncompliance is found. Upon receipt of an audit report indicating that practices disclosed are not in compliance with rules, standards or regulations, the ACO, through the Financial Services element, will request from the auditor the effect of the noncompliance on contracts containing the CAS clause and the effect on proposals which are currently under consideration that are expected to result in contracts containing the CAS clause. After ascertaining that the noncompliant practice affects either contracts or proposals, the ACO will take action in accordance with FAR 30.602-2.

d. *Review of Changed Practices*

(1) Changes to disclosed or established practices shall be processed in accordance with FAR 30.602-1, FAR 30.602-3, and subparagraph b(1) through (4) above. It should be noted that for changed practices the adequacy and compliance reviews will be accomplished concurrently.

(2) In the event the contractor has submitted an adequate description of the changed practices but these practices are determined to be in noncompliance and the contractor does not agree, the ACO shall notify the contractor of the adequacy of the changed practices with the stipulation that if those changed practices are implemented, the contractor shall be considered in noncompliance for the purpose of pricing or costing the Government contracts, and the ACO shall take action in accordance with FAR 30.602-2.

e. *Withdrawal of Adequacy Determination.* A Disclosure Statement, to remain a useful document, must be maintained in a current, accurate and complete status after the initial determination of adequacy has been given. If, while a contractor is obligated to maintain a Disclosure Statement (see FAR 30.202-3), it is determined at any time to be inadequate, the ACO should advise the contractor immediately that a revision to the Disclosure Statement is considered necessary. Action to withdraw an adequacy determination previously given for a Disclosure Statement should not be taken.

best copy available

unless the issue is material and the contractor will not make the revision.

30-7 Confidentiality of Disclosure Statements. All Freedom of Information Act requests which involve Disclosure Statement information will be processed in accordance with the Freedom of Information Act. DLAR 5400.14 provides policy and procedures governing information which may be exempted from disclosure. Any request to the Government for disclosure of information contained in a contractor's statement shall be coordinated with DCASR Counsel.

30-8 Review of CAS Covered Contracts

a. *Solicitation Notices.*—Upon receipt of a CAS covered contract for administration, the ACO shall review the contract for the contractor's responses to the following solicitation notices regarding CAS:

(1) Disclosure Statement—Cost Accounting Practices and Certification (FAR 52.230-1). This requires a contractor to make a certification regarding the requirement to submit a Disclosure Statement. Four possibilities exist in this situation:

(a) The contractor has submitted the required Disclosure Statement as part of the proposal, or

(b) The contractor is not required to submit a Disclosure Statement, or

(c) The contractor is not yet required to submit a Disclosure Statement, or

(d) The contractor has previously submitted a Disclosure Statement.

If the contractor has certified to either subparagraph (a) or (d), the ACO should already be aware of and/or have received the Disclosure Statement. If the contractor has certified that he is either exempt or not yet required to submit a Disclosure Statement, the ACO should accept the certification unless he has reason to question it. For example, the ACO should question the contractor's certification of monetary exemption if available information indicates the contractor, together with all divisions, subsidiaries and affiliates under common control, received CAS covered contracts totaling more than $10 million in its most recent cost accounting period. A contractor's certification of interim exemption should be questioned if the contractor exceeded the $10 million threshold in its most recent accounting period and more than 90 days have elapsed since the end of that period.

(2) Cost Accounting Standards—Exemption for Contracts of $500,000 or Less (FAR 52.230-1). This notice requires a contractor to check a box if he elects to claim an exemption for the contract. Failure to check the box indicates that the contractor is subject to or elects to be subject to CAS. ACOs will verify that the contractor has not previously claimed exemption on contracts for $500,000 or less on which final acceptance has not been made.

(3) Cost Accounting Standards—Eligibility for Modified Contract Coverage (FAR 52.230-1). This notice requires a contractor to indicate whether he claims an exemption from full CAS coverage (FAR 52.230-3) and to certify that he is eligible for modified CAS coverage (FAR 52-230-4). The ACO should assure that the contractor has not been awarded a single CAS covered contract or subcontract for $10.000,000 or more during his current accounting period.

(4) Additional Cost Accounting Standards Applicable to Existing Contracts (FAR 52.230-1). This notice requires a contractor to indicate whether award of this contract will require a change in his accounting practices to comply with a new Standard and whether the change affects existing CAS covered contracts and subcontracts. If the contractor checked "yes." the ACO shall request necessary information from the contractor and establish a suspense file to ensure timely receipt of the information (see FAR 52.230-3 and 52.230-4).

b. *Contract Provisions.* During the review of the contract provisions, the ACO should assure that the appropriate CAS clause is included—FAR 52.230-3 and 52.230-4) for full coverage or for modified coverage. The PCO should be notified if the CAS clause included in the contract is incorrect. The contract file may be annotated to readily identify the extent of CAS coverage, e.g., modified or full.

30-9 Processing of Noncompliances

a. A contractor or subcontractor is considered to be in noncompliance with CAS if:

(1) An accounting practice violates an applicable Standard.

(2) An accounting practice is different from that which was disclosed or established.

b. Upon receipt of a noncompliance report from DCAA, the ACO will request Financial Services to issue a pricing report to assist in the establishment of an initial finding of compliance or noncompliance. The ACO should notify the auditor of the initial finding within 15 days. If the ACO makes an initial finding of noncompliance, the contractor should be immediately notified and requested to indicate whether existing contracts are affected by the noncompliance. The ACO will then classify the noncompliance as either "preaward" or "performance." DLA Form 1603, CAS Noncompliance Control Register, will be used to monitor actions to resolve the noncompliance issue.

(1) *Preaward Noncompliance.* "Preaward noncompliance" refers to determinations on which the noncompliance affects only a contract proposal,

i.e., does not affect a contractor's existing CAS covered contracts or the contractor has no existing CAS covered contracts. If the noncompliance is classified "preaward," the ACO shall issue an Initial Finding of Noncompliance to the contractor and forward a copy to the PCO to advise that the cost associated with the noncompliance should be negotiated out of any contract awarded on the basis of the offeror's proposal. A copy of the Initial Finding of Noncompliance shall also be sent to the CACO or ACO assigned corporate responsibility and to the Financial Services element. The PCO has the responsibility of negotiating a proposal reduction, identifying the disposition of the noncompliance issue in the price negotiation memorandum, and furnishing a copy to the ACO. Until the disposition of the noncompliance is made known to the ACO, the noncompliance shall be held in suspense. If 120 days has elapsed since the ACO reported the noncompliance to the PCO and the ACO has not received notice of award, the ACO will ascertain from the PCO the disposition of the noncompliance.

(2) *Performance Noncompliance.* "Performance noncompliance" refers to determinations on which the noncompliance affects existing CAS covered contracts or disclosed practices. Noncompliances revealed by proposal reviews may be determined to be performance noncompliances only if they affect existing contracts or disclosed practices as well as proposals. If the noncompliance is classified "performance," the ACO shall issue an Initial Finding of Noncompliance for both the proposal and the affected existing CAS covered contracts and forward a copy to the PCO to advise that the cost associated with the noncompliance should be negotiated out of any contract awarded on the basis of the proposal. A copy of the Initial Finding shall also be sent to the contract auditor, to the Financial Services element, and to the CACO or ACO assigned corporate responsibility. The ACO, after obtaining input from the Financial Services element, should initiate discussions with the contractor for resolution of the issues. If the contractor agrees with the initial finding of noncompliance, the contractor will be requested to submit a cost impact proposal in sufficient detail to permit evaluation and negotiation of the impact upon each covered contract and subcontract. If the contractor disagrees, the ACO shall review the contractor's rebuttal and make a compliance/noncompliance determination. If, after considering the contractor's rebuttal, the ACO makes a noncompliance determination, the contractor will be requested to submit a cost impact proposal. Any notification to the contractor that the contractors' practice is "in compliance" should be accompanied with the stipulation that the determination of the contractors' current compliance does not preclude the ACO's reconsideration of the contractor's compliance with CAS if additional facts, new interpretations of regulations, or other changed circumstances become available to the ACO. If the Government and the contractor fail to reach an agreement on the cost impact or the contractor fails to submit a cost impact proposal, the ACO should proceed in accordance with FAR 30.602-2(d).

c. If the ACO determines the contractor's practice is in compliance notwithstanding an audit report to the contrary, the ACO shall fully document the basis for the determination. (See 90.01 for audit follow-up requirements regarding reported noncompliances.) Subsequent to action by the Board of Review, the ACO shall provide copies of the determination to the Financial Services element of the CAO, DCASR CAS Specialist, DCAA field office originating the audit report, and to the CACO or ACO assigned corporate responsibility.

d. Noncompliances may be revealed during a price/cost analysis review, DCAA review, or contractor systems review. For example, noncompliances normally revealed during a pricing review would generally be reported to the ACO via the pricing report. Noncompliances revealed by the cognizant contract auditor are reported in a DCAA CAS noncompliance audit report. CAS noncompliance issues involving compensation or insurance/pension issues will typically be surfaced in Contractor Employee Compensation System Reviews (see 31.205) or Contractor Insurance/Pension Reviews (see 28.3). In addition, the ACO may have reason to think that the contractor is in noncompliance, e.g., a progress payment request review may disclose the fact that a contractor bids costs by contract but records costs on a product basis that includes many contracts for the same item. This would indicate that the contractor may be in noncompliance with CAS 401—Consistency in Estimating, Accumulating, and Reporting Costs. In situations where noncompliances are surfaced by other than the Financial Services element at the CAO or DCASR (in the case of systems reviews), the ACO should advise the Financial Services element and request performance of a compliance review in the areas in which noncompliance is suspected. Upon receipt of the Financial Services input, the ACO will take action in accordance with FAR 30.602-2, Administration of Noncompliance Issues.

30-10 Processing of Voluntary Changes and New Standard Changes

a. A voluntary change refers to a change in an accounting system initiated by the contractor for his own purposes. The term new Standard change refers to those changes to a contractor's accounting system which are required by the Government.

b. Contractors who plan to make a voluntary change to their disclosed or established accounting practices or who are required to make a change because of a new Standard are required to submit:

(1) A narrative description of the accounting changes.

(2) Revised Disclosure Statement pages if appropriate.

(3) The general dollar magnitude of the change to reflect the sum of all increases and the sum of all decreases for all contracts and subcontracts containing a CAS clause.

The above data for a voluntary change must be submitted not less than 60 days prior to the effective date of the proposed change. For a new Standard change, the information must be submitted within 60 days after award of a contract which requires compliance with a new Standard.

c. Upon receipt of a contractor's voluntary or new Standard change, the ACO shall review the contractor's proposed changes concurrently for adequacy and compliance. Financial Services input should be requested. DLA Form 1604, CAS Voluntary/New Standard Change Control Register, will be used to monitor actions required to process the changes.

30-11 Review of Cost Impact Proposal

Upon receipt of a cost impact proposal, it will be processed for review and evaluation in accordance with Part 15.805. The price analyst's transmittal letter to the contract auditor will include a statement to the effect that the list of prime contracts affected and included in the proposal has been verified against the ACO's CAR and includes all CAS covered prime contracts assigned for CAS administration. The ACO should also insure that any known CAS covered subcontracts which may be affected are also included in the listing.

30-12 Contract Price Adjustments

a. *Processing.* Procedures for processing price adjustments resulting from noncompliance actions, new Standards, and voluntary changes are contained in FAR 30.602-2, FAR 30.602-1 and FAR 30.602-3 respectively. The following additional information is provided:

(1) *Noncompliances.* Increased costs resulting from noncompliances are discussed in detail in DFARS 30.

(2) *Voluntary Changes.* Equitable adjustments are permitted in connection with the cost impact of any accounting change which the ACO determines to be desirable and not detrimental to the interests of the Government. The term "desirable" encompasses the tests of being appropriate, warranted, equitable, fair or reasonable. A change may be desirable and not detrimental to the interest of the Government even though costs increase on the current inventory of contracts.

b. *Materiality.*

(1) In some instances, the ACO must determine whether the amount of cost involved warrants the execution of a price adjustment to one or more contracts. In making such materiality determinations, the ACO should consider the following criteria:

(a) The absolute dollar value involved. The larger the dollar amount, the more likely it is that a decision involving it will be material.

(b) The amount of total contract cost compared with the amount under consideration. The larger the portion of the total contract cost which is represented by the item or the decision under consideration, the more likely it is to be material.

(c) The relationship between a cost item and a cost objective. Decisions about direct cost items, especially if the amounts are themselves part of a base for distribution of indirect cost, will normally be more material than like decisions about indirect costs.

(d) The impact on Government funding. Decisions about accounting treatment will be more material if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.

(e) The relationship to price. When contract pricing is based upon estimated cost, decisions about cost accounting treatment in estimates are more material than comparable decisions about treatment of actual costs. When contract pricing is based on actual costs, decisions about accounting treatment for actual costs are more material than comparable decisions about estimates.

(f) The cumulative effect of individually immaterial items. It is appropriate to consider whether individual variances either tend to offset one another or tend to be in the same direction and hence, to accumulate into a material amount.

(2) ACOs are cautioned that materiality or significance of cost is not a factor to consider when determining whether or not the contractor is in noncompliance. If a contractor's accounting practice is in noncompliance, the ACO shall proceed in accordance with FAR 30.602-2.

(3) Whenever an ACO determines the cost impact to be immaterial, he will document the official contract file.

c. *Offsets.*

(1) An offset technique may be used to recognize a cost impact which requires price adjustments among several CAS covered contracts. Using this technique, the ACO may make required price adjustments by modifying only a single contract, several but not all contracts, or all contracts. If the cost impact relates to more than one contract, use of the offset principle may reduce the number of individual contract price adjustments required. Using this principle, increases under one or more CAS covered contracts would be offset by decreases under other CAS covered contracts thereby resulting in recovery of a net amount. In determining whether the offset principle may apply, the ACO is responsible for addressing each specific situation and determining the best way to accomplish the overall objective in a way that considers the equity and fairness of the matter and assures that the final cost to the Government is not materially different from that which would have resulted if each contract price had been individually adjusted. In using the offset technique, the ACO must also consider funding implications to assure that (a) the proper successor account is credited for prior year funds, as netted out, (b) funds currently available for expenditure are not increased by a credit from an expired or lapsed appropriation, and (c) funds appropriated for a specific purpose by the Congress are not intermingled. Therefore, to ensure the proper application of fund adjustments, proposed CAS contract price adjustments should be referred to the local Directorate of Systems and Financial Management and Office of Counsel for appropriate review and coordination prior to the ACO's execution of the contract modifications.

(2) One method that may simplify the computation in many instances would be to compute the impact of the change by types of contracts (e.g., firm fixed price, cost type) and adjust as few contract prices as necessary within each group before merging the net impact from each contract group with that of other groups. Grouping according to the relative materialability of the cost impact or other type grouping may also be used to reduce the number of price adjustments that must be made.

(3) If several organizational segments of a company are affected by the same accounting change, cost increases at one segment may be offset by decreases at another segment if the change causes costs to flow between the segments either directly or via a higher organizational level such as a home office. Accounting changes that only affect the flow of costs within individual divisions should be treated as changes within each division.

(4) Within a segment, several accounting changes may be combined for offset purposes as long as they have the same effective date.

(5) Offsets affecting incentive contracts should be carefully reviewed to avoid material impacts on the incentive provisions.

(6) As a general rule, offsets will not be made between prime contracts and subcontracts since the prime ACO cannot measure the total cost impact adjustment of a subcontract.

(7) Offsets generally will be made only between prime contracts of the same agency. Offsets between prime contracts of different agencies can be made only if all affected PCO's agree. If a PCO disagrees, his contracts will be excluded from application of the offset principle and will be individually adjusted.

d. *Price Adjustments to Contracts not Subject to CAS.* The Government's authority to make price adjustments for CAS purposes extends only to contracts containing a CAS clause unless the contractor expressly permits noncovered contracts to be adjusted. However, where voluntary changes on CAS covered contracts may result in an inequitable burden to the Government on noncovered contracts, the ACO should adjust noncovered contracts in accordance with the guidance contained in FAR 31.201–3(a) and FAR 21.203.

e. *Price Negotiation Memorandum.* At the conclusion of price negotiations the ACO shall prepare a price negotiation memorandum in accordance with the requirements of Part 15.808.

30–13 Multi-Division Corporations

a. Detailed instructions on Disclosure Statement filing requirements are provided in FAR 30.

b. If a CACO is assigned (see DoD 4105.59–H section III), it is his responsibility to perform CAS functions whether or not he is physically colocated with the corporate offices. Where a CACO is not assigned, an ACO in the geographical area of the corporate or group (intermediate) office will be assigned for the purpose of administering the CAS provisions even though no contracts have been awarded to such corporate office. The corporate office should be notified in writing of the ACO's assignment.

c. The assigned CACO, or the ACO assigned corporate responsibilities for administering CAS, shall coordinate with all divisional ACOs on matters related to CAS. It is the responsibility of the CACO, or the assigned ACO, to make the required determinations of adequacy and noncompliance concerning part VIII of the Disclosure Statement. The DACOs cognizant of operating entities are responsible for determinations concerning Disclosure Statements (parts I through VII) and for negotiations with such operating units. The assignment of a CACO/assigned ACO, does not relieve the divisional ACOs of their responsibilities for administering the Standards as they apply to their operating elements. Any existing or pending CACO/DACO agreements, prepared in accordance with part 42.70-8, should be modified to the extent necessary to make them consistent with the assigned CAS responsibilities.

d. Some corporations may have two or more organizational units at which all or some accounting practices are the same. In such cases the corporate headquarters or home office may submit a single Disclosure Statement covering all units or a partial statement covering all common practices. The CACO or assigned ACO will determine the adequacy of the statement with appropriate input from ACOs cognizant of other subordinate levels. All other CAS determinations and actions remain the responsibility of respective cognizant ACOs who shall forward a copy of determinations and actions to the CACO or the assigned ACO. The CACO or assigned ACO shall ensure that all determinations and actions which affect one or more subordinate units are reviewed for uniformity and consistency and that the results of such reviews are forwarded to ACOs cognizant of those subordinate units.

30-14 Administration of Subcontracts Containing the CAS Clause

a. *Notification of Award of Subcontract*

The Administration of CAS clause (FAR 52.230-3 and FAR 52.230-4) requires prime contractors or higher tier subcontractors to submit the following information to their cognizant ACO within 30 days of award of a CAS covered subcontract.

(1) Subcontractor's name and subcontract number

(2) Dollar amount and date of award.

(3) Name of contractor making the award.

(4) A statement as to whether the subcontractor has made or proposes to make any previously unreported changes to accounting practices that affect other CAS covered prime or subcontracts. If award of the subcontract requires the subcontractor to comply with a Standard for the first time, this shall also be reported.

Upon receipt of the required subcontract information, the prime contractor's ACO will review it for completeness and forward it, within 10 days, to the ACO cognizant of the subcontractor. This subcontract information should be used to ensure that all CAS covered work is considered if the contractor changes his accounting practices or is found to be in noncompliance.

b. *Subcontractor Disclosure Statements*

(1) FAR 30.202-8(c) describes certain circumstances under which a subcontractor may submit his Disclosure Statement directly to the ACO and auditor for the prime contractor and requires that ACO to furnish copies to the ACO and contract auditor cognizant of the subcontractor. In such instances, it is not contemplated that a preaward adequacy determination will be made. Instead, the ACO for the prime contractor will notify his contract auditor that the review for adequacy as well as noncompliance will be performed during the postward review conducted to ensure that the subcontractor has complied with his disclosed practices, CAS, and FAR 31.0.

(2) If it is determined that a waiver from the requirement to file a CAS disclosure statement should be requested, the ACO cognizant of the prime contractor shall prepare the documentation necessary for the Secretarial determination, and forward it to the appropriate authority cited in FAR 30.202-2.

c. *Subcontract Adjustments.* Since CAS affects the contractor's total accounting system, the ACO frequently will face noncompliant practices and/or accounting changes which relate to both prime and subcontracts. The ACO cognizant of the facility must assess the cost impact on the entire CAS covered universe. However, since the Government has no privity of contract with the subcontractors, the ACO has no authority to perform those CAS functions cited in FAR 42.302 for those subcontracts. The ACO may, however, discuss the recommendations or findings on subcontracts with the contractor, secure the comments and/or concurrence of the contractor and establish cost impact for the affected subcontracts. The ACO shall not initiate negotiations, direct corrective action, or obtain price adjustments on the subcontracts. In the event a CAS-related price adjustment involving a subcontract is required, the ACO must advise the ACO cognizant of the next higher tier subcontractor or the ACO cognizant of the prime contractor of the CAS-related impact on the subcontract. The recommendations and established cost impacts developed by the ACO for the subcontractor will be used as the basis for negotiations between the prime contractor and the prime ACO. Any adjustment to the subcontract is the responsibility of the prime contractor.

30-15 Review of Significant or Controversial CAS Issues

a. *Region Board of Review.* The following CAS actions are subject to examination by a Region Board of Review (see Part 90.01) for audit follow-up and 90.16 for Board of Review requirements).

(1) Modifications for contract price adjustments where the total negotiation results in an adjustment of $100,000 or more. This requirement

includes contract adjustments on which the sum of the costs deleted and costs added exceeds $100,000 even though the net increase or decrease is less than $100,000. It also includes CAS-related impacts of $100,000 or more established for subcontracts.

(2) Home office or group office changes which result in an aggregate flowdown to divisions of $500,000 or more.

(3) Actions of a significant and extremely controversial nature or actions where there is disagreement with any team member including the auditor. In these cases ACOs are cautioned not to communicate a final decision or determination to the contractor prior to receiving an opinion/recommendation from the Board.

(4) Actions on which ACOs desire Board advice.

b. *HQ DLA Review* (See 30.5 above.)

(1) Notwithstanding the above, to assure a higher level of visibility and consistency in implementation of CAS among the DCASRs, significant or extremely controversial issues may be reviewed at the HQ DLA (DLA-A) level prior to a final ACO decision. This review procedure may be used if there is serious disagreement among the team members as to the proposed decision or planned action for resolution and the ACO desires additional HQ DLA advice before making a final decision. It will provide an opportunity for field and HQ DLA representatives to meet together and examine all facets of the particular issue.

(2) Normally, the HQ DLA (DLA-A) review will be limited to those issues in which a significant sum of money is involved. The dollar amount, however, does not preclude an ACO from requesting a HQ DLA review of issues when the dollar impact is undefined, when the principles involved could be precedent setting, or for any other reason of significance as determined by Region management.

30-16 Record and Reporting

a. *Documentation of Action Taken Regarding CAS.* The ACO shall maintain a documented record of actions taken to effect conformance with CASB requirements. Such documentation should be maintained either in the Official Contract File or in the Suppliers Miscellaneous File as provided in DAR supplement 2.

b. *Maintenance of CAS Control Registers.*

(1) To monitor and control CAS administrative actions and to provide a summary record of action status, ACOs shall maintain DLA Form 1602, Cost Accounting Standards Disclosure Statement Control Register, DLA Form 1603, Cost Accounting Standards Noncompliance Control Register, and DLA Form 1604, Cost Accounting Standards Voluntary/New Standard Change Control Register. These forms are designed to assist the ACO in administering the CAS provisions and to monitor required actions in an effort to assure their timely accomplishment. Instructions for completing the registers are printed on the reverse side of each form.

(2) The control registers should be maintained by the ACO in such a way so as to provide ready access to the current status of all open CAS actions as well as to provide information required for reporting purposes. Three-ring binders or separate file folders may be used. The registers should *not* be used for documentation purposes in the Official Contract File.

c. *Data Entries for CAS*

(1) CAR. ACOs will review the CAR to assure that ACO Code Remark 20 has been properly entered for all CAS covered prime and support contracts. Contracts received "For Cost Accounting Standards Administration Only" should be entered in CAR Part A as support contracts with CA Function Code 6 and ACO Coded Remark 20.

(2) MIR (RCS: 448). ACOs are responsible for assuring that the CAS data they submit for the 448 Report are complete and correct. These data are used to indicate workload problems and to identify areas requiring Headquarters staff assistance. All of the CAS data will be input via DLA Form 657, Management Information Report. For data element 890J01, Prime and Support Contracts on Hand Containing a CAS Clause, data for input will be extracted from the MOCAS system by means of Report Inquiry UYCE23 (see paragraph A-500.4).

d. *Reconciliation with DCAA.* DCASRs shall reconcile the records on disposition of noncompliance audit reports with cognizant field audit offices on a quarterly basis.

31.109 ADVANCE AGREEMENTS INDEPENDENT RESEARCH AND DEVELOPMENT (IR&D) AND BID PROPOSAL (B&P) EXPENSE)

31.109-1 References

a. FAR 31.109, Advance Agreements.

b. FAR 31.205-18, Independent Research and Development and Bid and Proposal Costs.

c. DAR 15-107, Advance Agreements on Particular Cost Items.

d. DAR 15-205.3, Bid and Proposal Costs.

e. DAR 15-205.35, IR&D Costs.

31.109-2 Scope. This section covers the procedures for implementing the DoD policy for establishing allowability of IR&D and B&P costs on DoD contracts.

31.109-3 General. Contractors' IR&D and B&P costs are combined in this section because the allowability of the costs is established in the same manner and the costs are interchangeable within negotiated ceilings. Advance agreements are required if a contractor meets the dollar criteria specified in FAR 31.205-18. Negotiation responsibility is assigned to the Army, Navy, Air Force or DLA by mutual agreement of the Military Departments and published in a DAC. If the contractor is not required to negotiate an advance agreement for IR&D and B&P, the allowability of such costs will be determined by application of a formula specified in FAR 31.205-18.

31.109-4 Procedures

a. The Army, Navy, and Air Force negotiate the majority of the required IR&D and/or B&P agreements. DLA is assigned responsibility to negotiate required agreements by mutual consent of the three Military Services. Where DLA is assigned negotiation responsibility the assigned ACO is responsible for conducting the required negotiations. Contractors who are not assigned for negotiation but meet the requirements for an advance agreement should submit their request for an advance agreement to the cognizant DCAS ACO, who will forward the request to HQ DLA, ATTN: DLA-AF, for coordination with the Military Departments.

b. Those contractors required to negotiate advance agreements must have their IR&D programs evaluated by the IR&D Tri-Services Technical Evaluation Group for potential military relevancy and technical quality. The technical quality of a contractor's program will be expressed as a number on a scale of 0-10. Contractor IR&D technical plans for those contractors assigned to DLA for negotiation should be submitted to HQ DLA, ATTN: DLA-AF, for the transmission to the appropriate member of the Technical Evaluation Group. The format for the contractor's submission is specified by the Technical Evaluation Group and therefore, should be requested from HQ DLA (DLA-AF). The detailed IR&D technical plan should be submitted to the ACO within 90 days after the start of the contractor's fiscal year.

c. The contractor's IR&D and B&P proposed expenditures will be submitted to the Financial Services element for review and evaluation. The Financial Services element has the responsibility for accomplishing the proposal analysis as specified in section 15.805. The price analyst will, when requested, assist the ACO in preparing a negotiation position. In doing this analysis the analyst should compare and consider historical data for as many years as is considered necessary. In addition to items listed in FAR 42.1006(a), the analyst should consider the following:

(1) Ratio of IR&D/B&P expenditures to sales.

(2) Comparisons of amounts proposed, accepted and expended for IR&D and B&P.

(3) Changes in mix of business.

d. The negotiations should be concluded to the extent possible, prior to the incurrence of IR&D and B&P expense. Multiyear agreements should be considered whenever appropriate. Negotiations should not be delayed pending receipt of the Technical Evaluation Report for the current year's program. If the current year's rating is not available, the ACO shall include a provision in the agreement providing for the agreement to be reopended if the rating is significantly different than contemplated at the time of the negotiation. The negotiation of the advance agreement shall conform to the specific requirements of FAR 31.109. Since results of the negotiations will be binding on all Military Departments, the ACO must consider all recommendations made by representatives from the Military Departments.

e. At the conclusion of negotiations the ACO shall prepare or cause to be prepared a memorandum setting forth the principal elements of the ceilings negotiated. The memorandum shall be in sufficient detail to reflect the most significant considerations controlling the establishing of the ceilings negotiated. All advance agreements will be submitted to the Board of Review as required by part 90.1c.

f. The advance agreement will contain as a minimum the elements in FAR 42.1007, DFARS 42.1007 and the following:

(1) The composition of IR&D and B&P costs.

(2) A requirement to record all IR&D and B&P costs by individual project.

(3) A statement regarding the determination of potential relationship to military function or opera-

tion and provision for after-the-fact review for purposes of making a final determination of relevancy.

(4) Identification of the IR&D and B&P projects considered relevant to a military function or operation. This may be done by referencing the contractor's technical plan.

(5) A statement concerning the safeguarding of classified information developed by contractors under their IR&D programs as follows: "The contractor acknowledges the obligation specifically set forth in its Department of Defense Security Agreement (DD Form 441), wherein the contractor agrees to provide and maintain a system of security controls within its own organization in accordance with the requirements of the DoD 5220.22-M, and the contractor acknowledges the provisions of that manual whereby the contractor is requested, whenever it develops an unsolicited proposal or originates material not in the performance of a User Agency contract or program, and whenever that proposal or material contains information which may or should be safeguarded (but which is not already classified), to protect that information as though classified at the appropriate level until an advisory classification is obtained from the User Agency which has an interest in the subject matter."

(6) One copy of the Required Advance Agreement for IR&D and B&P expense will be forwarded to addressees listed in paragraph 42.7-8. In addition, one copy of the negotiation memorandum will be furnished to HQ DLA, ATTN: DLA-AFI.

g. HQ DLA (DLA-AFI) is required to report annually (annual report of IR&D and B&P negotiations—RCS DD-P&L(A)1139) on negotiations concluded during the year. This report requires, in addition to the proposed amounts and negotiated ceilings, the estimated share of the ceilings negotiated allocable to DoD contracts. The information should be included in the IR&D/B&P advance agreement negotiation memorandum.

h. Following completion of a contractor's fiscal year covered by an advance agreement negotiated by an ACO, the ACO will make a determination of potential military relationship of the contractor's actual B&P projects to assure that payments on DoD contracts do not exceed the amount of dollars expended on B&P projects that have a potential military relationship. A review of the contractor's conformance to the proposed IR&D program will also be made after the completion of the contractor's fiscal year. Any IR&D programs not included in the contractor's proposal will be submitted to the Technical Evaluation Group for review. Unless critical to payment of current year expenditures for IR&D the new projects can be submitted for a relevancy determination along with the next year's program. For contractors with advance agreements negotiated by Army, Navy, or Air Force, the ACO may be requested by the applicable Military Service to perform essentially the same after-the-fact reviews and advise the negotiator.

i. Contractors not required to negotiate advance agreements will normally have their IR&D and B&P costs determined by application of the formula in FAR 31.205-18. When the FAR cost principles were written, it was recognized that the formula would not always provide reasonable results, especially for small and/or fast-growing companies. It is DoD policy to reimburse contractors for reasonable IR&D/B&P costs. Therefore, the DAR permits negotiation of voluntary advance agreements for IR&D/B&P when application of the formula may be inequitable. Inequities may occur when the contractor's business management plans require expenditures for IR&D/B&P in excess of the amounts considered reimbursable by the formula or the contractor incurred little or no IR&D/B&P expenses in prior years and, therefore, had no basis for the formula application. Such a nonmandatory IR&D/B&P advance agreement will be negotiated by the cognizant ACO. If the ACO knows that the contractor requires a nonmandatory B&P or IR&D advance agreement, the contractor should be requested to submit a proposal within 90 days after the start of the contractor's fiscal year. Upon receipt of contractor's proposal or request for a nonmandatory advance agreement, the ACO will forward the request to the Financial Services element for review and evaluation. The Price Analyst will request audit and technical assistance, if considered necessary, and will prepare a comprehensive report detailing the reasons why an advance agreement should or should not be negotiated. The Price Analyst will also assist the ACO in preparing a negotiation position and assist at negotiations when requested by the ACO. The individuality of nonmandatory IR&D/B&P advance agreements precludes the establishment of uniform guidelines. However, among the factors that should be considered are the following:

(1) The contractor's management of the IR&D/B&P program. Is the program properly budgeted, managed and effectively controlled?

(2) The objectives of the IR&D/B&P program. Are the proposed expenditures primarily directed towards developing Government (DoD) products or towards expanding commercial markets?

(3) Contractor's capabilities and technical expertise. Does the contractor possess sufficient technical expertise and staffing to perform the planned IR&D/B&P program along with the contracted work?

(4) Bidding practices of the contractor. Does the contractor bid for contracts within its product line? Does the contractor have capacity to perform on

contracts for which it bids or does the contractor bid in an indiscriminate manner?

(5) Prior years sales growth.

(6) Level of prior years IR&D/B&P expenditures and reasons therefore.

(7) Previous products developed, if any.

(8) Current year-to-date expenditures, if any already incurred.

If the ACO contemplates making a determination that the contractor's request for a nonmandatory IR&D/B&P advance agreement is not justified, the ACO will notify the RCMS of that fact before advising the contractor. The RCMS will review and discuss the entire package (i.e., contractor's proposal and justification and technical assistance reports) to ensure that the ACO was provided with adequate information in this highly sensitive area. A copy of subsequent documentation showing disposition of the contractor's request (either the ACO's determination that the request is not justified, or a copy of the advance agreement and negotiation report if the contractor's request is considered justified) will also be provided to DLA-AF. The cognizant ACO should assure that those contractors not required to negotiate advance IR&D/B&P agreements are aware that they also must segregate, identify and burden IR&D/B&P.

31.2 PUBLIC VOUCHERS ALLOWABILITY OF COSTS

31.2-1 References

a. FAR 31, Contract Cost Principles and Procedures.

b. FAR 42.803, Disallowing Costs After Incurrence.

c. DFARS 31, Contract Cost Principles and Procedures.

d. DAR Section XV, Contract Cost Principles and Procedures.

e. DAR 3-809, Contract Audit as a Pricing Aid.

31.2-2 General

a. The ACO has responsibility for reviewing the total amount claimed by the contractor upon completion of cost-reimbursement contracts. The contract auditor is the authorized representative of the contracting officer for the purpose of examining reimbursement vouchers directly from contractors, transmitting those vouchers approved for provisional payment to the cognizant disbursing officer, and issuing DCAA Form 1, with a copy to the ACO, with respect to costs claimed but not considered allowable. In addition, the ACO may direct the issuance of DCAA Form 1, for any cost which should be suspended or disapproved. All suspension or disallowance actions will be taken against the contracts through use of DCAA Form 1 which will be issued and submitted to the contractor by the auditor. For NASA contracts, NASA Form 456, Notice of Costs Suspended and/or Disapproved, will be used. See 90.01 for audit followup requirements related to final payment or contract closing actions.

b. Under DoD contracts, completion vouchers will be forwarded by the contract auditor to the ACO for approval and transmittal to the cognizant disbursing officer. Under NASA contracts, completion vouchers will be forwarded by the contract auditor to the ACO for review only and transmittal to the PCO for final approval.

c. The ACO's responsibilities for allowability of the total contract cost extend beyond review of specific transactions. The ACO should always be alert to problems of overstaffing, excessive overhead costs, and other indications of unreasonableness of the costs being incurred. When the ACO believes hat unallowable costs may be present, discussions will be held with the contract auditor and other technical specialists as necessary to develop a review program for such costs.

31.2-3 Procedures

a. *Processing Public Vouchers for Interim and Final Payments*

(1) Upon receipt of a cost-type contract, the ACO will instruct the contractor, if necessary, by PAOC or letter, to forward all reimbursement vouchers to the auditor.

(2) The contract auditor will examine all interim vouchers submitted for provisional payment, and transmit those approved to the designated payment office for payment. Upon receipt of the final or completion voucher, the auditor will transmit an advance copy of the voucher and any closing statements received from the contractor to the ACO in accordance with DCAAM 7640.1, paragraph 8-701. Upon completion of the audit, the auditor will transmit the original of the voucher and the contract audit closing statement to the ACO. The ACO will review the final voucher to:

(a) Ensure that any appeals submitted by contractors on suspended or disallowed costs are resolved.

(b) Resolve any other questionable costs or contract administration matters (including a review for excess funds).

(c) Determine that all closing documents have been obtained, are in order, and properly executed.

(3) Close liaison with the contract auditor is to be maintained to assure timely resolution of all cost issues prior to receipt of final vouchers. The ACO should review the applicable overhead rate agreement when overhead rates are established by audit determination. The ACO will approve and transmit the final voucher to DS&FM for final payment under DoD contracts. Completion vouchers submitted under NASA contracts will be reviewed by the ACO in the same manner as DoD contracts (see subparagraph 31.2-3a(2)(a), (b) and (c) above) and transmitted to the PCO for approval prior to payment.

b. *Processing Public Vouchers for Subcontract Termination Settlements*

(1) To ensure that termination settlements with subcontractors are reviewed and approved by a TCO, the contractor will be required to claim reimbursement for such subcontract settlements on separate vouchers and to submit the vouchers to the ACO administering the contract. This requirement is reflected in DCAAP 7641.58, which identifies separate public voucher requirements connected with contractors' claims for reimbursement under cost-reimbursement type contracts.

(2) Upon receipt of the public voucher from the contractor, all copies will be transmitted by the ACO to the cognizant termination element for required action.

(3) As soon as evaluation by the TCO has been completed, the TCO will return the voucher to the contractor with a letter indicating the amount of

the settlement approved for payment and instructions to submit the voucher, supported by a copy of the approval letter, to the auditor for processing in accordance with normal procedures.

c. *Contractor Deficiencies.* During the course of examination of vouchers or conduct of audits, deficiencies may be disclosed which seriously reflect upon the contractor's ability to efficiently and economically perform present or future Government contracts. These deficiencies may relate to such matters as cost controls or management practices. Any such disclosures will be reported by the contract auditor to the ACO, in accordance with DCAAM 7640.1, paragraph 3-311.5 for appropriate action.

d. *Allowability of Costs.* All determinations of allowability of costs must be in accordance with FAR 31 and DFARS 31 and specific terms of the contract. The auditor may take suspension or disallowance actions on his own initiative, as the result of the examination of vouchers submitted under the contract or the result of continuous or periodic audit of the contractor's accounts. The ACO, as the individual responsible for the contract administration, may also direct the auditor to issue DCAA Form 1 when there is reason to believe a cost should be suspended or disallowed, and to make an appropriate deduction from subsequent vouchers submitted by the contractor. The auditor will prepare and distribute all DCAA Forms 1, as follows:

(1) Original and three copies to the contractor, two copies of which are to be acknowledged and returned by the contractor to the ACO and auditor, respectively.

(2) One copy to the ACO for official contract file.

(3) One copy to audit file.

(4) Eight copies to the disbursing office, attached to the applicable voucher (on subsequent distribution) from which the amount involved may be deducted.

e. *Review of Paid Vouchers.*

(1) The ACO will ensure that the contractor is submitting public vouchers in accordance with DCAAP 7641.58, so that one copy is marked for return to the ACO after payment. The ACO will review copies of paid vouchers to assure adequate evaluation of the contractor's overall contract management, costs control effectiveness, and performance. The ACO will also review paid vouchers to aid in monitoring the contractor's compliance with the requirements of the limitation of cost clause to notify the contracting officer when incurred costs are expected to exceed certain limits set forth in the clause. This latter responsibility of the ACO is particularly important with regard to NASA contracts, for which vouchers are processed in substantially the same manner as for DoD contracts.

(2) If the contract is terminated for the convenience of the Government, the following paid vouchers will be routed by the ACO to the TCO for appropriate action.

(a) In the case of a partial termination, paid vouchers covering termination settlement expenses.

(b) In the case of a complete termination, all vouchers paid subsequent to the effective date of termination.

f. *Processing Requests for Interim Payment of Fee.*

(1) The ACO shall arrange with the contractor and auditor, respectively, for routing of the contractor fee requests and subsequent ACO/auditor handling thereof. These arrangements should minimize the time and administrative effort of all parties in processing interim vouchers, consistent with the requirements of the contract clause.

(2) Where the amount of interim fee is based upon the percentage of physical completion, or deliveries of completed end items, the ACO shall periodically verify that the contractor's progress on the contract is commensurate with the fee requested.

(3) Where fee is based upon other than percentage of completion or contract progress the ACO shall periodically review the status of fee on the contract and advise the auditor if adjustments in fee should be made in subsequent vouchers.

(4) The frequency of the reviews required in (2) and (3) above should vary with the adequacy of the contractor's accounting system, the contractor's reliability and integrity, and the amount of fee requested.

g. *Contractor's Appeal of Disapproved Costs.* The DCAA Form 1 provides that in the case of disallowance actions, the contractor may appeal the action within 60 days after receipt of the DCAA Form 1. If the contractor makes such appeal, the ACO will make a determination in writing as promptly as practicable, and mail or otherwise furnish a copy to the contractor, the auditor, and the payment office. These determinations sometimes involve very complex issues and large amounts of money. Moreover, they may have an impact far wider than the particular transaction at issue. The ACO should accordingly be alert to seek legal counsel, audit opinion, or other expert advice as appropriate before reaching a decision (see part 33).

h. *Resolution of Contractor's Appeal of Disapproved Costs.* In the event the ACO contemplates making a final cost determination which is inconsistent with the auditor's advice and/or the decision has a potentially major impact on contract costs, i.e., of a significant or precedent-setting nature, the policies and procedures set forth in paragraph 42.7-6e and 90.01 will be followed. Upon reaching a proposed resolution of the DCAA Form 1, the ACO should prepare a memorandum describing the pertinent events and factors considered in reaching a decision. A copy of the memorandum supporting the ACO decision will be provided to the Board of Review for appropriate action (see part 90.16).

31.2-4 Non-DoD Contracts. Except with regard to NASA contracts, procedures set forth above are generally not applicable in the administration of non-DoD contracts. Under other than DoD and NASA contracts, reimbursement vouchers are processed by the auditor to the PCO or other office designated. In the event a PCO desires specific services, the desired services will be requested in the letter of delegation. ACOs who require copies of vouchers in order to perform contract administration on non-DoD contracts may make local arrangements to obtain them from the PCO, auditor, or contractor, as appropriate. When requested, DS&FM will use this copy of the voucher to update the CAR. The voucher will then be returned to the ACO for information and ultimate filing in the contract file.

31.205 CONTRACTOR EMPLOYEE COMPENSATION REVIEWS

31.205-1 References.

a. FAR 42.302.

b. FAR Part 30, Cost Accounting Standards

c. FAR 31, Contract Cost Principles and Procedures

d. DFARS Part 42.7

e. DAR 1-406

f. DAR Section XV, Part 2, Contracts with Commercial Organizations

g. DCAA Manual 7640.1, Chapter 5, Section 5-803, Contractor Employee Compensation System Review.

31.205-2 General.

Contractor employee compensation cost includes: salaries, wages and selected fringe benefits. The ACO is responsible for determining the reasonableness of total compensation costs charged to Government contracts and included in proposed contract prices. To assist the ACO in carrying out this responsibility, the Financial Services element will support the ACO by requesting and coordinating DCAA reviews of contractors' employee compensation costs and assisting in the resolution of complex compensation issues. The Financial Services element at each DCASR, DCASMA and DCASPRO, as appropriate, shall assign a price/cost analyst as a DCAS focal point for requesting and coordinating DCAA reviews and to provide advice and assistance to ACOs on matters pertaining to contractors' compensation.

31.205-3 Criteria.

a. ACOs will request, and DCAA will perform, reviews of contractors' employee compensation costs at DoD contractor locations that have actual or anticipated annual sales to the Government of $10 million or more on negotiated prime contracts and subcontracts under Government prime contracts. It may be appropriate, however, for DCAA to conduct reviews on a more or less frequent basis under certain circumstances. Initial reviews should be given the highest priority. However, reviews should also be based on a risk assessment of the potential return to the Government for effort expended on each, considering sales volume, collective bargaining negotiations, major contract awards, mergers or divestitures. Further, an ACO may formally waive a review on an annual basis when prior reviews have disclosed that a contractor's compensation costs are considered reasonable as defined by FAR 31.205-6, and the contractor has an acceptable system. In addition, an ACO may request a review of a contractor that does not meet the above dollar criteria.

b. *Not-For-Profit Contractors.* Reviews shall be requested on contractors that meet the above criteria and perform under contracts which incorporate the Cost Principles in FAR 31.2.

c. *Special Reviews.* Limited reviews of selected compensation elements such as executive pay, merit increases, lump sum bonuses, deferred compensation, or relocation allowances may be performed when requested. A special review may also be requested to verify contractor implementation of recommendations from prior reviews.

d. Military Department and civilian agency requests for reviews should be directed to DCAA.

31.205-4 Responsibilities.

a. The ACO is responsible for:

(1) Determining the need for a compensation cost review and notifying Financial Services to prepare a letter for the ACO's signature requesting such a review.

(2) Advising the contractor of DCAA review results no later than seven days after receipt of the report. A draft letter advising the contractor of review results shall be prepared by the price/cost analyst for the ACO.

(3) Advising the contractor that any proposed significant changes to the contractor's existing compensation structure should be submitted to the ACO.

(4) Preparing written justification for waiving a review.

(5) Providing other ACOs/PCOs copies of letters to contractors detailing review results.

(6) Assuring adequate follow-up on all report recommendations.

b. DCASMA and DCASPRO price/cost analysts assigned to coordinate and assist ACOs on compensation issues are responsible for:

(1) Preparing a draft letter for the ACO's signature to request required reviews.

(2) Preparing a draft letter for the ACO's signature to request unscheduled DCAA reviews when conditions warrant (i.e., before a major contract award or collective bargaining agreement or during in-depth overhead rate reviews).

(3) Maintaining for ACOs a listing of required reviews to assure that contractors meeting the criteria are identified and reviewed. The listing should indicate the status of all scheduled and completed DCAA reviews (i.e., date of next review and last review).

(4) Advising ACOs in writing through the Financial Services Chief, reviews which could be waived for one year based on knowledge of compensation costs obtained from recent pricing reviews.

(5) Preparing a draft letter for the ACO's use to advise the contractor of review results and to request a schedule of corrective action(s) to be taken and the estimated completion date(s) of corrective action(s).

(6) Assisting ACOs in resolution of report recommendations and negotiation of settlements. Compensation matters which cannot be resolved locally will be forwarded to the Regional focal point for assistance.

c. The Regional price/cost analyst focal point is responsible for:

(1) Reviewing information on the status of DCAA's compensation reports and taking appropriate action regarding completion of reviews.

(2) Assisting price/cost analysts on administrative and/or technical matters which cannot be resolved locally.

(3) Providing a focal point of contact to assist ACOs and interface with DCAA Region's compensation monitors regarding resolution of significant compensation issues, scheduling matters, etc.

31.205-5 Procedures.

a. Approximately 60 days prior to the beginning of the fiscal year, price/cost analysts will advise ACOs of known contractors who may require review in the upcoming fiscal year. The ACO will review the listing and add or delete any contractors not requiring review in the upcoming fiscal year. Written justification is required for contractors that meet review criteria but do not require review, as indicated in Paragraphs 31.205-3a and 31.205-4a(4). If an ACO determines that a review is necessary, the price/cost analyst will prepare a letter for the ACO's signature requesting the cognizant DCAA audit office to perform a review. The analyst will advise ACOs of the proposed schedule.

b. The analyst should suggest to DCAA any areas of special interest to the ACO for inclusion in the review. During the review period, the price/cost analyst should be responsive to any special informational requests made by the ACO.

c. Within seven days of report receipt, the ACO shall provide a copy to the contractor and allow 30 days or a reasonable extension thereto for submission of its written response. The price/cost analyst will assist the ACO by preparing a draft letter for the ACO's signature which advises the contractor of review results and requests appropriate action(s) be taken. If the contractor agrees with report findings and recommendations, the contractor should, within 60 days of receipt of the initial notification, correct any identified system deficiencies or submit a corrective action plan showing milestones and actions leading to correction of deficiencies. If the contractor disagrees with report findings and recommendations, the contractor's response should contain the rationale for each area of disagreement. The price/cost analyst will assist the ACO in resolving complex and controversial compensation issues. Compensation matters which cannot be resolved locally should be forwarded to the Regional focal point for assistance. If the issue cannot be resolved by the Regional focal point, the matter will be forwarded to HQ DLA-AF. It will include the field price analyst's views and the additional research performed by the Regional focal point. The ACO will be sent an advisory letter from the appropriate Financial Services element. The ACO will then make the final determination as to the allowability of costs. Requests for HQ assistance on controversial compensation matters will be signed by Chief, Financial Services Division and also contain a general summation of the Region's views.

d. The ACO is responsible for follow-up on all report recommendations.

e. The proprietary nature of information contained in DCAA's compensation reports necessitates close control and limited distribution. After receipt by the ACO, one copy will be forwarded to the price/cost analyst responsible for coordinating the review for use in future pricing actions.

32.173 FINANCIAL INFORMATION AND ANALYSIS

(HIGH VULNERABILITY: 32.173)

32.173-1 References

a. FAR 32.108, FAR Financial Consultation.

b. FAR 32.503-2, Supervision of Progress Payments.

c. DFARS 32.173, Financial Information and analysis.

d. DFARS 32.174, Appropriate Information.

32.173-2 General. This procedure covers the evaluation and surveillance of the financial capabilities of contractors:

a. Who request Government financing not otherwise provided for contractually.

b. Who are receiving Government assistance.

c. Whose financial conditions were determined to be marginal in the preaward survey.

32.173-3 Definition. The term financial assistance, as used in this procedure, refers to guaranteed loans, advance payments, and progress payments.

32.173-4 Procedures

a. In matters relating to financial assistance to contractors, the chief, Financial Services element will be responsible for recommending to the ACO the extent of financial assistance required, and the type of assistance considered appropriate. In arriving at such recommendations, the assigned financial analyst will utilize and coordinate the services and skills of price/cost analysts, auditors, engineers and other specialists as necessary. The Financial Services element will maintain surveillance of the financial condition of contractors in the three categories set forth in subparagraph 2, above, to the extent that the contractor's financial condition warrants continuous surveillance.

b. Supplemental contractual provisions to provide additional financial assistance or to modify existing financial assistance clauses will be accomplished by the purchasing office. The ACO will make appropriate recommendations, based on the financial analysis to the purchasing office. The ACO's recommendations will be forwarded in a timely manner.

32.4 ADVANCE PAYMENTS

32.4-1 References

a. FAR 32.4, Advance Payments.

b. FAR 52.232-12, Advance Payments.

c. DFARS 32.4, Advance Payments.

d. DAR 7-104.34, Advance Payments.

e. DAR Appendix E, Part 2, Basic Policies and Part 4, Advance Payments.

32.4-2 General. Advance payments are made only to prime contractors under contracts which contain the advance payments clause. Advance payments by the prime contractor to subcontractors or suppliers may also be made in conformance with the clause. Unlike progress or partial payments, advance payments are made prior to, in anticipation of, and for the purpose of complete performance under a contract or several contracts under a Pool Agreement. Therefore, the risk borne by the Government would be commensurately increased by an inadequate contractor progress, management, or deterioration of financial condition. Advance payments are limited by statute to amounts which at no time exceed the unpaid contract price and should not exceed the actual reasonable requirements for the contract or the interim cash needs arising during the reimbursement cycle. It is therefore incumbent upon the ACO, with the assistance of available functional specialists, to maintain a continuing evaluation of the actual reasonable requirements, compliance with contractual obligations, and progress toward satisfactory completion. When advance payment provisions are contained in a contract, it is equally important that responsible personnel utilize all proper means available to them to avoid any unwarranted delay in actions required of the Government, e.g., determination and payment of amounts that become due the contractor, negotiation of overhead or definitization of change orders or letter contracts.

32.4-3 Procedures

a. *Application for Advance Payments.* Contractual provisions for advance payments and the amounts of advance payments to be paid to a contractor are negotiated by the PCO for incorporation either as a part of the basic contract or by supplemental agreement. The PCO is also responsible for prompt execution of supplemental agreements involving refunds by contractors as described in FAR 32.609.

(1) When applications for advance payments are received from the contractor, the ACO will promptly:

(a) Review to ensure that the application includes the supporting elements as outlined by FAR 32.408.

(b) Notify the PCO by forwarding one advance copy of the contractor's application.

(c) Request assistance of the Financial Services element, cognizant Government Auditor, and other functional elements as necessary to obtain adequate analysis.

(d) Evaluate findings and submit with recommendations to the PCO.

(2) When a request is received from the PCO for assistance in evaluating an application for advance payment provisions received directly from a prospective contractor, the ACO will promptly furnish the requested support with the advice of available functional elements in accordance with subparagraph (1)(c) above.

b. *Administration of Contractual Provisions*

(1) *Special Bank Accounts.* The advance payment agreement and suitable covenants to protect the Government's interest form a part of the contract or supplemental agreement executed by the PCO. The agreement should provide for deposit of all payments into special bank accounts in accordance with the contract clause and FAR 32.411. Except as otherwise provided for in the contract, withdrawal for advance payment must be provided for in the agreement. Payments will be made by check only, signed by the contractor, and countersigned by the ACO on behalf of the Government. The payment must be for the purpose specified. Such withdrawals should therefore be closely supervised (with the assistance of the cognizant Government auditors where necessary) to ensure their application to the specified purposes. All advance payments and all other payments under the contract will be made by check payable to the contractor and be marked for deposit only in the special bank account with the bank designated in the contract until all advance payments and interest charges are liquidated as also provided for in the contract.

(2) *Continued Evaluation of Contractor Performance, Financial Condition, and Justified Amounts of Advance Payments.*

(a) With the assistance of other Financial Services elements and technical functional elements, the ACO is responsible to see that advances outstanding are sufficient for but do not exceed the actual reasonable requirements for the contracts based upon analysis of the contractor's cash flow in respect to the interim cash needs arising during the reimbursement cycle. Contractor's periodic and interim financial statements (e.g., Profit and Loss Statements, Balance Sheets and Cash

Flow Forecasts) will be obtained and analyzed only as frequently as may be required by the contract or deemed necessary by the ACO to accomplish this purpose consistent with the with the guidance contained in DFARS 32.173. ACO recommendations concerning additional advance payments or contractor refunds will be prepared when appropriate, and forwarded to the PCO by the most expeditious means.

(b) When an advance payment clause is incorporated into a contract by the PCO, the ACO will request the Production, the Quality Assurance, and the Financial Services elements, as well as the cognizant auditor to maintain close surveillance and to advise immediately of any actual or potential production slippages, deterioration in quality or significant change in the financial condition of the contractor. The inclusion of an advance payment clause will also be noted in the Remarks section of the CAR.

32.590 PROGRESS PAYMENTS BASIC PHILOSOPHY

(HIGH VULNERABILITY: 32.590)

32.590-1 References

a. FAR 32.5, Progress Payments Based Upon Costs.
b. FAR 52.232-16, Progress Payments.
c. DFARS 32.5, Progress Payments Based Upon Costs.
d. DAR 7-104.35, Progress Payment Clauses.
e. DAR Appendix E-500.

32.590-2 Nature of Progress Payments. Progress payments is a method of interim contract financing on fixed price contracts (and may be present on a fixed-price portion of cost-type contracts) in which the Government shares with the contractor the financial burden of performing on long lead-time items. Progress payments are used in order to save the Government the additional expense which would be incurred if the Government had to reimburse contractors for the cost of commercial financing through higher bid prices. Progress payments are especially beneficial to small business which, in many instances, would otherwise be unable to compete for Government contracts because they could not obtain commercial financing or could not sustain the high rate of interest for the period between contract award and the first delivery for which they could be paid under standard payment provisions.

32.590-3 Conditions for the Use of Progress Payments. Progress payments are usually included on fixed-price contracts meeting the following conditions:

a. *Small Business.* A delivery period of 4 months or longer between initiation of work and the first anticipated delivery for which the contractor may be paid.

b. *Large Business.* A delivery period of 6 months or longer between initiation of work and the first anticipated delivery for which the contractor may be paid. Progress payments for large business are discouraged on contracts less than $1 million.

32.590-4 Administrative Concept Embodied in the Progress Payment Clause (FAR 52.232-16 and DAR 7-104.35)

a. *Reliance on the Contractors Accounting and Management Systems.* Of the five methods of contract financing cited in FAR and DAR, customary progress payments are rated second only to private financing in order of preference. This preferential ranking is due to the fact that characteristics which a contractor must demonstrate (or be capable of developing) in order to qualify for award of a contract containing progress payments make it unnecessary for the Government to monitor progress payments as closely as it does payment on cost type contracts. Some of the characteristics which contractors must demonstrate or be capable of developing are adequate experience in producing the contract item, a satisfactory performance record, sufficient financial strength, a company management capable of demonstrating sound business judgment, and an adequate accounting system and controls. Many of these elements are examined prior to award as part of the determination of responsibility or are known to the Contracting Officer based on experience on recent contracts.

b. *Payments Based on Costs.* The progress payments governed by the clause at FAR 52.232-16 and DAR 7-104.35 are based on costs, not on a percentage of physical completion. Payments based on physical completion are limited to construction and shipbuilding contracts. The FAR and DAR define costs as all expenses of contract performance which are reasonable, allocable, and not excluded by other terms of the contract. For the preparation of the SF 1443 or DD Form 1195, Contractor's Request for Progress Payments, the clause distinguishes between two categories of costs, paid costs and incurred costs. The distinction between the two is important, when considered together with the size status of the contractor. Large businesses may claim only their paid costs and certain narrowly-defined incurred costs; small businesses may claim both paid costs and more broadly defined incurred costs. A second distinction between these categories is in the treatment of subcontractor progress payments. Progress payments to subcontractors are reimbursed to the prime at a level of 100 percent. All other costs are reimbursed to the prime at the contractually specified progress payment percentage.

e. *Ceiling Limitation on Progress Payments.* The progress payments clause identifies two maximum limitations on progress payments. On individual requests, payments are limited to costs multiplied by payment rate plus subcontract progress payments. On a total contract basis, total payments shall not exceed contract price multiplied by payment percentage. For either of these limitations to be exceeded, the contractor must request, an unusual progress payment percentage in accordance with FAR 32.501-2 or DAR E-505. If an unusual payment rate is approved, the contract must be modified to incorporate the new rate before payments may be made using it.

d. *Monitoring Progress.* Paragraph (c) of the progress payments clause requires ACOs to monitor the contractor's progress on the contract. There are two basic reasons for monitoring the contractor's progress:

(1) To ensure that the unliquidated progress payments are supported by the fair value of the work accomplished on the undelivered portion of the contract (i.e., the amount the Government could reasonably expect to realize from the disposition of inventory acquired for the production of the contract end item).

(2) To ensure that the Government does not suffer a loss on the contract. The concept of "loss to the Government" is critical to discerning the difference between appropriate and inappropriate ACO actions to be considered on the contract. The loss to the Government contemplated by the clause is nondelivery of the contract end-item. If delivery is assured, the financial picture of any individual contract is less significant, e.g. a large multinational corporation sustaining a million dollar excess of cost over price would not be serious unless it jeopardized ultimate delivery. However, the same level of excess cost in a small business with limited resources and numerous outstanding debts would surely endanger delivery. In his decision-making, the ACO must strike a delicate balance between the need to ensure delivery or, that being impossible, to minimize the flow of money into a questionable situation, and the obligation not to contribute to the contractor's financial collapse, which would result in nondelivery.

e. *Suspend or Reduce Payments*

(1) *Suspension/Reduction for Reasons Contained in the progress payments clause.* While the progress payments clause constitutes a commitment by the Government to provide contract financing to the contractor, paragraph (c) of the clause gives the ACO the right to suspend, or reduce, or specially liquidate progress payments under certain conditions. The primary purposes of this right are to protect against loss of unliquidated progress payments, and to insure contractor compliance with the terms of the progress payments clause itself. The Government does not have the right, and the ACO shall not reduce, suspend, or specially liquidate progress payments as a retaliatory or punitive action for disagreements with the contractor over other issues. The ACO shall exercise the Government's rights under paragraph (c) of the Progress Payments Clause with the above in mind. FAR 32.503-6 and DAR E-524 require the ACO to analyze suspension and reduction actions for all possible effects on both the contractor and the Government, and to discuss the proposed suspension or reduction in detail with the contractor. Because the discussion on reducing or suspending progress payments often occurs in an atmosphere of heightened concern about a contractor's ability to deliver the supplies and/or services on the contract, it is critical for the Government acquisition specialists to determine as accurately as possible the contractor's probability of delivery. If the ACO concludes that liquidation of progress payments is unlikely, the ACO must consult with the PCO to determine the best course of action under the circumstances. While the decision concerning termination is the PCO's, the ACO remains responsible for decisions concerning progress payments. The ACO, in deciding whether to continue progress payments should consider all factors, including the PCO's intentions. Normally, the ACO should suspend progress payments if the PCO decides to terminate for Default. However, even if the PCO decided not to terminate for Default, the ACO shall make an independent decision as to what the best interests of the Government are concerning the payments of further progress payments.

(a) Suspension/Reduction for failure to comply with a substantive requirement of the contract is valid except where the contractor's failure to comply is the result of any events beyond the control and without the fault or negligence of the contractor. A list of these causes may be found in paragraph (c) of the Default clause DAR 7-103.11 or FAR 52-239-8.

(b) Suspension/Reduction for unsatisfactory financial condition will be restricted to those cases where contract completion is obviously imperiled by the contractor's financial difficulties and continued payment will not secure contract performance. Timely evaluation by the production and financial analyst is critical to effective action by the ACO in protecting the Government's interest.

(c) Suspension/Reduction for excess inventory may be effected by reducing the contractor's costs on the DD Form 1195 or SF 1443 or by increasing the liquidation rate. However, under the automated procedures, the ACO will direct the contractor to make such changes to the DD Form 1195 or SF 1443 as are required and to resubmit the corrected form to DS&FM for processing.

(d) Suspension/Reduction for delinquency in payment of costs of performance should be restricted to the circumstances listed in subparagraph (b) above.

(e) Suspension/Reduction to control the fair value of work on the undelivered portion of the contract is normally mandatory in accordance with FAR 32.503-6(f) and DAR E-524.5. However, if application of the Loss Ratio adjustment would damage the Government's interests, for example if the suspension/reduction would actually prevent the contractor from completing the work in process and thus liquidating the progress payments, the ACO may exercise judgement in refraining from applying the loss ratio adjustment. It should be noted that any Quality Program/Inspection System deficiency that casts doubt upon the acceptability of the work in process also casts doubt upon the fair value of that work in process. For this reason, whenever the ACO requests a Government determination of the fair value of the undelivered work, the report should be a joint product of the IS and QAR.

(f) Suspension/Reduction by increasing the liquidation rate. (See paragraph 32-593-1.)

(2) *Costs in Dispute.* If the ACO issues a final decision that the contractor is not entitled to claim certain costs on his progress payments requests, then the ACO may reduce the contractor's request by the amount in dispute. The ACO shall place the contractor in a "reduce payment" classification. If the contractor agrees in writing to remove from his progress billings the costs in disputes before preparation of the Progress Payment Request, the ACO need not resort to the use of the "reduce payment" classification.

f. *Government Title.* Under the terms of paragraph (d) of the clause, title to all materials, inventories, tooling, and data acquired or produced by the contractor for the performance of the contract vests in the Government when the contract is signed. For a more detailed discussion of the major administrative issues surrounding title, see 32.595.

32.590-5 Administrative Concepts Embodied in DAR E-500 and FAR 32.5

a. *Minimum Government Surveillance.* As a financing technique, progress payments enjoy a favored position because it requires a minimum of administrative effort by the Government. The clause, the DAR and the FAR reflect this in that they rely principally on the contractor's accounting system and controls, production system and certification on the Progress Payment Request to protect the Government's interest. DAR E-521 and FAR 32.503-2(a) states that the extent of supervision required should vary inversely with the contractor's financial strength, experience, performance record, reliability and quality of its management and accounting controls. Reviews of financial conditions generally should be focused on the contractor's whole system unless the ACO wishes to review the situation on a specific contract. Reviews for physical progress should be limited to individual contracts and then only as much as necessary to ensure that the Government has timely knowledge of circumstances which would adversely affect contract performance.

b. *DCAA Prepayment Audit of Individual Requests.* When a contractor's accounting system and controls have been determined adequate by the ACO for the purpose of progress payments, either on the basis of a special or on-going review by DCAA, or on the basis of the ACO's recent experience with the contractor, there shall normally be no prepayment audit of the first progress payment request. It further limits the requesting of prepayment audits at any time on the contract to the following circumstances:

(1) The ACO has reason to doubt the certification signed by the contractor on the Progress Payment Request.

(2) The ACO believes the contract will involve a loss. Whenever the ACO determines prepayment audits is necessary, he shall document the contract file with his rationale, which may apply to one or more successive requests for progress payments.

c. *Payment of Amounts Not in Dispute.* When contractors and ACOs disagree about the propriety or extent of costs claimed on the Progress Payment Request, ACOs should not withhold the entire amount of the request pending resolution of the issues surrounding the amounts in dispute. Rather the ACO should reduce the request by the amount in dispute and pay the balance not in dispute.

d. *The Contractor as an Entire Entity.* Since Government contracts are not performed in a vacuum, administrative personnel must be aware of all of the contractor's activities which may impact on his ability to perform on the Government contract. Signs of difficulty in one area may well indicate the need for close observance of progress on the contract.

e. *Reduction or Suspension.* See 32.590-4e above.

32.591 DATA REQUIREMENTS FOR AUTOMATED PROCESSING OF CONTRACTOR'S REQUEST FOR PROGRESS PAYMENT

(HIGH VULNERABILITY: 32.591)

32.591-1 Input of Data to the Progress Payment Master File. Automating the procedures for processing progress payment requests requires all automatic data processing requirements to be transmitted to DS&FM through the use of DLA Form 1634, Progress Payment Authorization. Contract price, payment and liquidation rates in the Progress Payment master file are automatically updated using the MOCAS data base. All other changes to the data in the Progress Payment Master File must be made through the use of the DLA Form 1634.

32.591-2 System Requirements Prior to Submission of First Progress Payment

a. The ACO must complete the following actions before the first Progress Payment Request from a contractor can be paid.

(1) Determine whether the contractor's accounting system and controls are adequate for purposes of progress payments. (See 32.592-3a(1).)

(2) Establish a review cycle for the contract. (See 32.592-3b.)

(3) Establish a First Article Dollar Limitation if required. (See 32.592-3a(1).)

(4) Execute subordination agreements if required. (See paragraph 32.592-3b.)

(5) Issue a letter to the contractor changing distribution of the Progress Payment Request as follows: (See 32.592-4.)

(6) Prepare DLA Form 1634 in two copies entering:

(a) Review cycle category

(b) First Article Dollar Limitation as appropriate

(7) Attach one copy of the DLA Form 1634 to the DLA Form 325, Progress Payment Administrative Record, and forward the second copy to DS&FM.

b. When the DLA Form 1634 data is entered into the computer system, the Progress Payment Master File will be created and the computer will process the contractor's Request for Progress Payment.

32.591-3 Correctly Prepared Request for Progress Payment Which Passes All Validation Tests. If a contractor's Request for Progress Payment is correctly prepared, contains accurate data and passes all computer processing tests which have been established by the clause and FAR/DAR, a check reflecting the amount at line 26 will be mechanically prepared by the computer. The ACO will receive a computer generated report UYFM04, Payment Notification for Progress Payment Review Report, advising him that payment was made for the requested amount. The ACO shall file the report with the record copy of the request received from the contractor. This will constitute the ACO's record of payment.

32.591-4 Progress Payment Request Validation

a. If the DS&FM Data Entry Clerk makes an error when inputting data from the request, an error message will be generated by the computer. The clerk must verify that the data was entered correctly and accurately reflects that data portrayed by the request. If no input errors are found the clerk will cause the computer to reject the request to the ACO at the computer terminal where computer support is provided. However, if the initial cause of the error notice was an input error and appropriate correction(s) are implemented which are followed by additional error notices generated by the computer system, the clerk will verify that the request is failing validation for reason(s) other than input errors, the clerk will cause the computer to reject the request to the ACO at the terminal where computer support is provided. For each request that fails validation for other than input errors the computer will generate a UYFM01, Contract Administration, Progress Payment Report showing initial and correct data entries line by line with error messages explaining discrepancies. These error messages are described in section A-700.

b. The ACO upon receiving a UYFM01 will obtain from the contract file the record copy of the Progress Payment Request in question. A review of the elements of data will be conducted. After the review is completed and the ACO is satisfied that he understands why the request failed validation, the procedure set forth by section A-700 will be followed for correcting improperly prepared requests.

32.591-5 Limitation Tests, Error Messages and Corrective Action. The mechanics of the computer evaluation of data provided on the DD Form 1195, Contractor's Request for Progress Payment, the Error Messages which will be generated if the limitation tests are exceeded and the corrective action required by the ACO are discussed in section A-700.

32.591-6 Progress Payment Request Forms. Except as provided below for computer generated progress payment requests, contracts containing the DAR Progress Payment clause shall continue to use the DD Form 1195 and contracts containing the FAR Progress Payments clause shall use the SF 1443. In accordance with DFARS 32.503-1, contractors may submit computer generated Progress Payment requests in lieu of the SF 1443 (or the DD Form 1195 under the previous DAR deviation) subject to the following Agency procedures:

a. At the discretion of the Administrative Contracting Officer, the contractor may submit computer generated Requests for Progress Payments, in lieu of the printed DD Form 1195 or SF 1443, if all of the following occur:

(1) The computer generated request is in accordance with the contracting officer's requirements, including any requirements for media, format, and communications protocol.

(2) The contractor's computer generated request for progress payment contains all of the following:

(a) All headings, titles, line numbers, and line names on the face of the DD Form 1195 or SF 1443.

(b) The information in sections I, II, and III and in the certification block of DD Form 1195 or SF 1443.

(c) The full text of the Certification, and

(d) The following sentence added to the Certification: "This request for progress payment is in accordance with the Instructions on the reverse of the (DD Form 1195 or SF 1443 as appropriate) edition of ______ and the contracting officer's authorization of ______."

(3) One copy of the computerized Progress Payment Request bears a manual Contractor Representative signature.

Note that the routing of these computer equivalents is no different from the routing of printed Progress Payment Requests currently in practice.

b. Nothing in this authority or in the Progress Payment clause, requires the Government to accept computer generated progress payment requests, or requires the contractor to provide them in lieu of printed forms.

c. Contracting Officers shall not approve use of computer generated progress payment requests without the prior written concurrence of the Disbursing Officer responsible for paying the progress payments.

d. In addition to the above, with the concurrence of the Disbursing Officer, the Administrative Contracting Officer may authorize use of machine readable requests consisting of only the data required by a 2 (b) and the dates required in a 2 (d) above, provided the Administrative Contracting Officer and Disbursing Officer each concurrently receive at least one permanent, manually signed, human readable request meeting all of the requirements of a (2) (a) through (d) above. However, prior to exercising the authority of this paragraph, each Region shall coordinate with DLA-CFF.

32.592 PROGRESS PAYMENTS—THE PREAWARD AND POSTAWARD ACTION OCCURRING PRIOR TO PAYMENT OF FIRST REQUEST FOR PROGRESS PAYMENTS

(HIGH VULNERABILITY: 32.592)

32.592-1 References

a. FAR 9.103, Contractor Qualifications Policy.

b. FAR 9.106-1, Conditions for Preaward Surveys.

c. DFARS 9.103, Contractor Qualifications, Policy.

d. DFARS 9.106-70, Audit Responsibilities for Preaward Surveys and Reviews.

e. DAR 1-904, Determinations of Responsibility and Non Responsibility.

f. DAR 1-905.4, Preaward Surveys.

32.592-2 Preaward Actions

a. *PCO Elects to Include Progress Payments Clause in Solicitation.* When the PCO decides to include progress payments in his procurement he is telling prospective bidders/offerors that the Government will finance their production efforts. Theoretically, the bidders/offerors will respond by lowering their prices by an amount commensurate with what commercial financing would have cost them. It is for this reason that when a contract does not contain progress payments provisions and the contractor wishes to receive progress payments, the Government must obtain consideration in return for granting progress payments if the contractor's bid price was established in anticipation of obtaining commercial financing whose costs were included in the bid price. The use of Government financing advantages the contractor by the amount of the unused commercial financing.

b. *Preaward Surveys.* Preaward surveys are an ideal source of information about those areas of a contractor's operation which are of interest in administering progress payments. However, PASs are not conducted on every contract or on every contractor. For those contracts on which a PAS was performed, the ACO may use its data for the purpose of completing the initial DLA Form 325 (See subparagraph 32.592-5 below for instructions on preparing the DLA Form 325). For those contracts on which a PAS was not performed, the ACO may use any data or techniques available to evaluate the contractor's systems. However, at the very least the ACO must make a determination that the contractor's accounting system is adequate for the purpose of progress payments. (See 32.592-3b(1)c(1).)

32.592-3 Postaward ACO Review

a. *Contract Review.* The ACO will review the contract for the following elements prior to the payment of the first Progress Payment Request from a contractor.

(1) *First Article Provisions.* If the contract contains the First Article Approval Clause, DAR 7-104.55, or FAR 52.209 the ACO shall check to ascertain if the required first article limitation is contained in the contract. The amount of the limitation will be entered on the DLA Form 1634 and transmitted to DS&FM.

(2) *Foreign Military Sales (FMS Provisions.)* Contracts with FMS provisions contain special documentation requirements with which the contractor must comply.

(a) *Contracts with Combined FMS/US Purchases*

1. These contracts will contain two progress payment rates: one for the U.S. items and one for the FMS items. Because the Progress Payment Request forms are not designed to segregate the costs associated with the FMS items from those associated with the U.S. items, a separate request must be prepared for the items represented by each progress payment rate. The costs displayed on the request must be only those associated with the items produced under the specific rate.

2. If there is more than one non-U.S. customer country on a contract involving FMS, the contractor must submit a schedule with his FMS request showing a breakdown of the total at line 18 or 26 among the customer countries for which the work was performed. Progress payment requests shall not be paid without this schedule.

3. If the FMS portion of a combined contract contains only one customer country then no additional documentation will be required.

(b) *Contracts with FMS Only*

1. If the contract contains more than one customer country, the schedule described above will be requested and requests shall not be processed without it.

2. If the contract contains only one customer country, no additional documentation will be required.

b. *Review of Contractor.* The ACO must ensure that the contractor's various systems are capable of supporting the administrative requirements inherent in progress payments. The contractor must have (or be capable of developing) effective accounting, production, quality, and management systems. The ACO must evaluate these systems before the first request for progress payment can be paid. The results of this evaluation shall be entered in section B of the DLA Form 325 and used to determine the contractor's category. The appropriate data elements will be entered on the DLA Form 1634 and transmitted to DS&FM. The base date used to determine the elapsed time for the first review for a given category will be the date that the initial DLA Form 1634 was input to the computer. As part of the basis for categorizing contractors, the ACO should obtain any information developed by technical specialists that reflect upon the criteria in Section A or B of the DLA Form 325.

(1) *Sources of Review Data*

(a) If a PAS, should cost study, or other preaward evaluation was performed, the ACO may use those findings as the basis for his evaluation.

(b) In the absence of a preaward evaluation of the contractor, the ACO may evaluate the contractor's system based on similar information in-house if that information is less than 12 months old or the result of ongoing contracts.

(c) If the contractor does not qualify under either of the above circumstances, the ACO shall request Financial Services to obtain analyses from DCAA, production, quality, and any other office deemed necessary.

1. If DCAA's review of the contractor's accounting system reveals that it is less than totally adequate for progress payments purposes, the ACO will ascertain the deficient areas and notify the contractor that no progress payments will be paid until the contractor's system is capable of supporting the costs the contractor will be claiming.

2. Once the ACO finds the accounting system adequate, no further review of the accounting system is required until the next scheduled periodic review in accordance with 32.594-2, or unless the ACO has reason to doubt that the contractor's system is performing in an acceptable manner.

3. If the Financial Services review reveals that the contractor should execute a subordination agreement to protect the Government's title to progress payment inventory (see 32.595), the ACO shall obtain the executed agreement before the first progress payment will be made.

(4) If the IS or QAR reports, or has previously reported, Production or Quality System problems, the ACO will determine whether satisfactory performance of the contract is sufficiently probable that approval of any progress payments is justified under the circumstances. Prior to approval of any progress payments, the ACO should require the contractor to provide a written course of action showing how the deficiencies cited by the IS or QAR will be resolved, or prevented from affecting contract performance or the progress payments.

(5) In all cases where the ACO may doubt the financial, technical or managerial (including quality management) condition of a contractor, the ACO should request appropriate information from the contractor to resolve these doubts. This request may include the appropriate information cited in DFARS 32.174 as well as any other information relevant to the area in doubt.

(2) *Frequency of Review*

(a) The ACO will record on the DLA Form 325 the date on which he completed his review and the category in which the contractor falls (1, 2, or 3). These data will also be entered on DLA Form 1634 for transmission to DS&FM for input into the computer.

(b) At his discretion, the ACO may require reviews more frequently than quarterly. However, it is not expected that this will occur on any but the most doubtful of contractors on a long term basis.

c. *Postaward Orientation Conference.* ACOs should consider a PAOC for all contractors unfamiliar with DoD progress payments or with DLA's automated processing procedures for progress payments.

d. DCAA utilizes its knowledge from reviews of contractors' internal controls to assess the vulnerability of the Government to fraud, waste, and abuse, and tailors its audit programs accordingly. While this assessment is intended by DCAA to cover the broad range of the contractor-Government relationship, the area of progress payments is one of particular sensitivity to DCAS. The ACO should therefore discuss this subject with the auditor for those particular contractors where there may be concerns as to the reliability of the progress payment system. DCASMAs/DCASPROs should establish close coordination with the appropriate DCAA office(s) for review of progress payments in such cases.

32.592-4 Letters of Notification to Contractor. Prior to payment of the first Progress Payment Request the ACO shall issue a letter to the contractor which shall include but not be limited to the following:

a. Contractor distribution of the Request:

(1) Except as provided in (2) and (3) below, the contractor shall be instructed to forward 4 copies of each Request to the DCASR Payment Office, ATTN: DS&FM, and to forward one copy to the ACO.

(2) The Directors of Contract Management and Systems and Financial Management may establish procedures requiring all copies of the initial progress payment request on each contract to be forwarded to the ACO to insure proper preparation of DLA Form 1634 prior to receipt by DS&FM (see also DLAM 7000.1, Section 50804).

(3) When presigning is authorized by the Director, Contract Management (see 32.593-7), the Contractor shall be directed to forward all copies of the Request for Progress Payment, directly to the ACO for review and signature.

b. *Instructions for numbering Progress Payment Requests on contracts with combined US/FMS Requirements.* The progress payment rates shall determine the set into which a given progress payment request falls. All Progress Payment Requests will be numbered sequentially within the set plus the identifier US or FMS as appropriate. For example, the contractor's first Progress Payment Request is for US items and is numbered 1-US; his second and third are for FMS items and are numbered 1-FMS. and 2-FMS, respectively; his fourth Progress Payment Request is for US items and is numbered 2-US because it is the second at the 80/85 percent rate.

c. *First Article Limitation.* The ACO shall insure that any limitations on Progress Payments established by the first article clause, are understood by the contractor.

(1) When a contract contains a requirement for first article approval, the amount of costs claimed must be in consonance with the contract first article payment limitations. When the modified first article approval clause authorized by DAR 1-1902(c) or FAR 9.308-1(a)(3) or FAR 9.308-2(a)(3) is included in the contract, the contractor may acquire specific materials or components, or commence production prior to approval of the first article. Costs incurred under such authorization will be eligible for progress payments.

(2) If there is more than one first article or the contractor is permitted to acquire long leadtime items, the amounts shall be combined to form a single ceiling which will be used by the computer for the evaluation of progress payments. This data shall be abstracted on the DLA Form 1634 and entered in the data base prior to payment of the first Progress Payment Request.

32.592-5 Instructions for Completing the DLA Form 325, Progress Payments Administrative Record

a. *General.*

(1) This form is to be used for initial reviews, for periodic reviews and evaluations of the contractor's status on the contract, and for special reviews when the ACO has reason to question the reliability or accuracy of the contractor's certificate on the Progress Payment Request.

(2) On an initial review the ACO shall complete item 1, sections A, B, and F (if necessary). On a review and evaluation for whatever reason, the ACO shall complete item 1, sections A, and C, and transmit it to Financial Services together with a copy of the most recent Progress Payment Request. The evaluator in Financial Services will complete section D and return the DLA Form 325 to the ACO, who will complete section E and F (if necessary). The ACO will then record the results of his reviews on the DLA Form 1634 and send it to be intered to the computer.

(3) When the ACO has completed action on the DLA Form 325, it shall be filed in part 5 of the official contract file.

b. *Specific Instructions.*

Block 1	Indicate whether this is the first DLA Form 325 prepared on this contract (initial) or one resulting from a subsequent review.

SECTION A

Block 2	Self-Explanatory.
Block 3	Self-Explanatory.
Block 4	Enter date that contract review was initiated.
Block 5	Enter the total contract price as reflected by the most recent modification making a change in contract price. If the amount to which progress payments applies is less than total contract price, enter the amount to which progress payments applies. If the contract contains both U.S. and FMS requirements and this is the initial DLA Form 325, the total contract price shall be entered. If the contract contains both U.S. and FMS requirements, and this is not the initial DLA Form 325, the amount entered in block 5 should be the total which applies to either the U.S. or the FMS portion, whichever reflects the items for which the Progress Payment Request was submitted. For contracts other than firm-fixed price, the amount entered in block 5 should be contract price as defined by DAR E-509.7 or FAR 32.501-3 or DFARS 32.501-3.
Block 5a	Enter the latest modification number regardless of whether it changed the contract price.
Block 6	Self-Explanatory.
Block 7a	Self-Explanatory. A "No" response must be explained in section F.
Block 8	Self-Explanatory. A "No" response must be explained in section F.
Block 9	Self-Explanatory.
Block 10	Self-Explanatory. A "No" response must be explained in section F.

SECTION B

Section B is to be completed by the ACO based upon information which the ACO has available to him or which he obtains from other functional specialists. The ACO may request such information in whatever detail he deems necessary.

Block 11 Enter the numerical ratings as indicated in the appropriate columns. A rating in the unsatisfactory or unknown column must be explained in the Reason and Source columns. Reason and Source columns need not be used for ratings in the "Satisfactory" column. All rating evaluation factors refer to the contractor as a business entity.

Block 12 When the ratings are totaled in block 11, check the appropriate category block.

Block 13 Self-Explanatory.

SECTION C

Block 14 Self-Explanatory. If additional space is needed, use section F.

Block 15 Self-Explanatory.

Block 16 Self-Explanatory. After completing, send to the Financial Services for completion of section D.

SECTION D

Section D is to be used by Financial Services only on reviews subsequent to the initial review. The Financial Services evaluator shall obtain all information necessary to complete section D. The Financial Services evaluator shall not send the form to Production for completion. The Financial Services evaluator shall maintain all the documentation necessary to support the evaluation; however, the data should not be sent to the ACO unless he requests it.

Block 17 Financial Services evaluator shall obtain the necessary information for completion of this item.

SECTION E

Block 18 Check the item which best reflects the decision. If the decision is adverse to the contractor, a full explanation should be given in section F.

32.593 OTHER ADMINISTRATIVE MATTERS

(HIGH VULNERABILITY: 32.593)

32.593-1 Liquidation Rates

a. *Ordinary Liquidation Rates.* The liquidation rate contained in the contract is designed to discharge the contractor's obligation to the Government by reducing his delivery invoices at a rate equal to that at which he is paid progress payments. It is for this reason that DAR E-512.1 and FAR 32.503-8 requires the liquidation percentage to be the same as the payment rate at contract inception. As long as liquidation rate is the same as the payment rate, the liquidation rate is considered ordinary.

b. *Alternate Liquidation Rates.* When the liquidation rate is different from the payment rate, it is an alternate rate and is used on occasions when the contractor may need an alternate liquidation rate (he is not earning enough profit; the Government is liquidating at too high a rate) or the Government may want an alternate liquidation rate (when profit is too high or the contract is in danger of being underliquidated). Lesser alternate rates are mandated where contractors are on the transition method prescribed by Cost Accounting Standard 410. Each situation will be discussed below. All alternate liquidation rates must be effected by a contract modification.

(1) *Contractor Initiated Request for Alternate Liquidation Rate*

(a) A contractor may request the ACO for an alternate liquidation rate at any time during contract performance in accordance with the criteria cited at DAR E-512.2(b) or FAR 32.503-9(a):

1. If no deliveries have been made, there must be at least 12 months of cost data on the contract.

2. If deliveries have been made, there must be available actual cost data on those deliveries.

3. The contract must have a performance period of 18 months or more from award date.

4. The contractor must furnish contract cost data in sufficient detail to support his request for a specific alternate rate.

5. The proposed alternate rate must accomplish the goals of a liquidation rate as enumerated at DAR E-512.2a or FAR 32.503-10.

6. The contractor must agree to provide current data as requested by the PCO/ACO but not less often than annually. A bilateral modification to establish the new rate shall then be executed. Reductions in the contract liquidation rate under this condition shall not occur more often than once in a 12 month period.

(2) *Contracts Subject to Redetermination or Incentive Price Revision.* These contracts have negotiated profit rates which may change periodically. When the profit rate is renegotiated or the contractor can demonstrate that he is not getting such rate, the liquidation rate must be adjusted. Changes in the contract liquidation rate under this condition may occur more frequently than once in a 12 month period, depending as it does on the frequency with which the profit rate is changed. A bilateral modification establishing the new liquidation rate shall be executed.

(3) *Government Initiated Alternate Liquidation Rate.* If the ACO determines that the contract is in danger of being underliquidated, which would cause a failure to fully recover the amount of progress payments, paragraph (c) of the progress payments clause gives the ACO the right to unilaterally raise the liquidation rate to a percentage appropriate to recover the amount of progress payments. ACOs shall discuss their proposed increase of the liquidation rate with the contractor before issuing the unilateral modification in accordance with 32.590.4e.

(4) *Cost Accounting Standard (CAS) 410, "Allocation of Business Unit G&A Expenses to Final Cost Objectives."* CAS 410 requires all contractors subject to CAS to use a cost input method (e.g., total cost) to compute G&A in lieu of a cost output method (e.g., cost of sales). Some contractors on an output method elected to move to a cost input method gradually under a transition method offered by the standard. The transition method allowed them to compute G&A on their established output method for all those contracts awarded prior to the date the contractor was required to change to a cost input method. The distinguishing difference for progress payment purposes is that G&A is recognized as it is incurred under the input method; under the output method G&A is not recognized until deliveries are made. Consequently, contractors on an output method theoretically should not be receiving G&A on their progress payments; rather, they should be receiving it on their delivery invoices. This is the rationale behind the DAR E-509/FAR 32.503-7 provision that G&A will not be considered an incurred cost for progress payments purposes for contracts subject to the transition method of CAS 410. However, the contractor will be entitled to a reduced liquidation rate to recognize G&A on deliveries (DAR E-512.1 or FAR 32.503-8).

(5) *Alternate Liquidation Rates and FMS.* When the ACO is considering an alternate liquidation rate on a contract with FMS and US require-

ments, he must consider the necessity of changing only one or both rates, since the necessity for changing one may not impact on the other.

32.593-2 Subcontract Costs

a. The progress payment clause in contracts awarded to large business concerns authorizes the contractor to request progress payments based on his progress payments to subcontractors only after actual payment to the subcontractor. Contracts with small business concerns allow the contractor to request progress payments based on unpaid billings for progress payments to subcontractors which have been approved for current payments in the ordinary course of business, when the subcontracts conform to the progress payment clause in the Government contract.

b. When a contractor's request includes progress payments made to a subcontractor, the ACO will assure that the applicable subcontract(s) include a progress payment clause and the title provision of that clause provides for the vesting of title directly in the Government (see DAR E-513.2 and FAR 32.504).

32.593-3 Property Administration

a. Pursuant to the terms of the contract, the Government acquires title to property upon the signing of the contract. However, property to which the Government has acquired title solely as a result of progress payments is not subject to the provisions of DAR Appendix B or FAR 45. Therefore, the PA's role in the progress payment clause is limited to responding to requests for assistance from his ACO. There will be times when the ACO, based on information furnished him as to questionable accounting practices, financial instability, etc., may determine that he needs to know whether or not the contractor has the ability to identify inventory to which the Government has acquired title because of progress payments. In such cases, the PA may be requested to review the contractor's property controls using any parameter or bench mark he may have available which would provide him with a conclusion that the contractor can or cannot identify progress payment inventory should it become necessary to do so.

b. While the conduct of the physical inventory of such property or determining the estimated or actual cost thereof is not specifically the responsibility of the PA, he may be called upon to assist other members of the ACO's team (Price/Cost Analyst, Auditor, QAR, IS, Engineer, etc.) in accomplishing this function. The ACO's request will specify the extent of PA participation in this area.

32.593-4 Progress Payments Against Basic Ordering Agreements/Indefinite Quantity Contracts.

DAR E-503.3(b) and FAR 32.503-5(c)(2) provide that when a contractor so requests and the ACO specifically approves that request, progress payments may be processed against the agreement or basic contract in lieu of individual orders. This provision notwithstanding, it is DCAS policy that such approval shall not be given.

32.593-5 Report of Adverse Developments

a. (1) The ACO shall issue a Report of Adverse Developments when there is reason to suspect that the safety of Government furnished contract financing (such as progress payments, advance payments, etc.), or other Government assets, is in doubt.

(2) The ACO shall issue a Report of Adverse Developments when there is reason to suspect that the ability of a contractor to discharge an existing indebtedness to the government (for example, a deferred payment agreement), is becoming endangered.

b. The reports required above shall not be delayed until it is a foregone conclusion that the contractor will be declaring bankruptcy or will be unable to continue performance. In all instances in which the report of Adverse Developments coincides with actual or impending bankruptcy, or contractor cessation of operations, the copy of the report provided to the Region Director of Contract Management and to the DLA Contract Financing Office shall be accompanied by an explanation as to why the adverse developments were not anticipated and reported earlier.

c. The Report of Adverse Developments shall contain at least the following:

(1) Contractor's name and address.

(2) Summary of contractor's financial condition: Provide an analysis of the contractor's latest financial statements including cash flow statement etc., along with the status of any pending claims, guaranty agreements, or subordination agreements. Summarize credit position with lending institutions and vendors. Include any other financial data affecting contractor's ability to continue performance. The foregoing information should be obtained from Financial Services which should provide it expeditiously. However, issuance of the report should not be delayed if the above information is not yet available. Financial information should then be provided in a supplemental report.

(3) Protective measures taken or proposed by the Government: Include such items as reduction or suspension of progress payments, the amount suspended and the reasons therefor, and actions taken to assure protection of Government-owned

property. Identify Show Cause letters or Termination for Default notices issued and any other information which would be of interest to the Departmental Contract Financing Office.

(4) Individual contract information:

(a) Contract number.

(b) Contract price.

(c) Contract dollar value shipped.

(d) Status of actual deliveries compared with contract delivery schedule.

(e) Unliquidated progress payments and potential for recoupment.

(5) A list of affected procuring activities, with PCO names or Codes, and PCO telephone numbers if known.

d. The ACO shall also issue an ACO "After Action" report upon completion of administration of the contracts for which a Report of Adverse Developments was issued. This report shall state the amount of financing or assets that had been at risk, the amount saved or recovered as of the final report, and if there has been less than full recovery of the funds or assets, an explanation of the reasons for the loss. When the ACO (or DCAS-PRO/MA) is requested by the PCO to perform post Termination for Default actions the final report shall not be issued until such actions are completed. "After Action" reports shall be distributed to the Region Director of Contract Management and DLA-CFF.

e. *Distribution of Reports of Adverse Development.*

(1) Each Report of Adverse Development required by paragraph a(1) above, shall be distributed to:

(a) The DLA Contract Financing Office (DLA-CFF)

(b) Each Procuring Contracting Officer with a contract containing contract financing provisions.

(c) Each Procuring Contracting Officer, or for secondary delegations, the Administrative Contracting Officer with Government-owned assets such as GFM, Government-owned facilities, prime contractor provided progress payments, etc., which may be at risk.

(d) The Contract Financing Office of each department of an affected PCO under (b) and (c) above.

(e) The Region Director of Contract Management.

(f) When bankruptcy is imminent a copy of the report shall be provided to the DCASR Office of Counsel, in addition to the immediate verbal notice expected by DLAM 7000.1, Section 120803, paragraph 1.

(g) Contracting Officers with contracts not having Government assets or financing at risk should be notified of the adverse developments via normal production progress/delinquency reporting, if performance of a particular contract is expected to be affected.

(2) Adverse Development Reports required by a.(2) above shall be distributed to:

(a) The DLA Contract Financing Office (DLA-CFF).

(b) The affected Contract Financing Office(s) if other than DLA.

(c) The Region Director of Contract Management.

(d) DCASR Office of Counsel

f. The adresses of the Departmental Contract Financing Offices for distribution of Adverse Development Reports are:

Army:
Assistant Comptroller of the Army for Financing and
Accounting
ATTN: Contract Financing Office Indianapolis, Indiana 46249

Navy:
Comptroller of the Navy
ATTN:
NCD-4
Room 4C741, The Pentagon
Washington, D.C. 20350

Air Force:
Air Force Accounting and Finance Center
ATTN: Code TCB
Denver, Colorado 80279

DLA:
HQ DLA
ATTN: DLA-CFF
Cameron Station
Alexandria, Virginia 22304-6100

Note that some of these mailing addresses differ from that of the Departmental Contract Financing Offices in the DFARS due to the geographic separation of some Departmental functions.

32.593-6 ACO Changes to Contractor's Progress Payment Requests. ACOs are encouraged to counsel contractors on how to complete the Progress Payment Request in an acceptable manner. This subject should be considered anytime the ACO schedules a PAOC with a contractor who will be receiving progress payments. ACOs should not actually perform the mathematical computations and/or make entries on the Progress Payment Request for the contractor. Progress Payment Requests containing entries which must be changed or corrected shall be returned to contractors for resubmission as set forth by appendix A-700. On rare occasions where the contractor's continued operations would be endangered by returning the request to the contractor for correction, the ACO may change or correct entries on the request on behalf of the contractor to enable the contractor to obtain payment. Since Progress Payment Requests will continue to be rejected if the source of the problem (the contractor's records) is not corrected the ACO shall ensure that the contractor corrects his records. ACOs will make such changes on the contractor's behalf only if the contractor agrees to correct his records. Whenever the ACO makes his corrections for the contractor, he shall document the file with his rationale for changing the contractor's Progress Payment Request.

32.593-7 Use of Block 27 on the Progress Payment Request

a. "Presigning" means approving a progress payment request (by filling block 27 and signing the DD Form 1195, SF 1443, or computer prepared equivalent) prior to that request having been processed through the automated progress payment system and prior to receiving a UYFM01 report.

b. Except as provided in (c) below the practice of presigning is expressly forbidden. The Director of Systems and Financial Management shall inform the Director of Contract Management of any presigned Progress Payment Request received which is not in conformance with (c) and (d) below.

c. The Director of Contract Management may authorize presigning of all progress payment requests for a specific contract, when requested by an ACO, if one or more of the following conditions affect payment:

(1) The contract contains mixed fixed price and cost reimbursement pricing arrangements, which causes the automated system to incorrectly reject an otherwise correct and proper Progress Payment Request, due to the absence of Section III,

(2) The contractor combined US and FMS entitlements into a single request for progress payment *prior to* the implementation of the automated progress payment system and it is impracticable to reconcile the Government's financial records thereby causing the rejection of an otherwise correct and proper Progress Payment Request.

(3) The contract is incrementally funded,

(4) The obligated dollars of the contract cannot be reconciled within a reasonable period of time due to the number of modifications outstanding, or

(5) The Director of Contract Management determines for a particular contract that presigning is necessary for reasons not listed above.

d. The Directorate of Contract Management shall maintain a register of, assign a reference number to, and advise the Directorate of Systems and Financial Management of each authorization for presigning of progress payments.

e. Because a signed Progress Payment Request bypasses most of the computer validation tests, the ACO is responsible for insuring that the DAR progress payment limitations are not exceeded and that the Progress Payment Request is mathematically correct. The ACO shall enter the assigned reference number in the signature block whenever presigning a Progress Payment Request.

f. The procedures established in DS&FM for processing presigned Progress Payment Requests will result in receipt by the ACO of both UYFM01 and UYFM04 reports for each presigned request. The ACO shall establish a suspense to ensure receipt of these reports and shall take prompt action in accordance with region procedures if such reports are not received.

32.593-8 Use of the "Stop Payment" and "Reduce Payment" Codes

a. The "Stop Payment" and "Reduce Payment" codes shall be used to routinely stop or reduce payments where the contractor has been overpaid (payment has exceeded the limitations imposed by the clause and by the DAR or FAR) or prematurely paid (payment was made for costs before he was entitled to them) or his progress is unsatisfactory.

b. When suspension or reduction for the reasons cited in paragraph (c) of the clause is contemplated, the ACO shall not enter the codes without performing the analysis described in DAR E-524, FAR 32.503-6 and paragraph 32.590-4e above, resulting in a written determination (recorded either on the DLA Form 1634 or in a Memorandum to File) the substance of which shall be communicated to the contractor. The ACO shall utilize all the technical specialists he believes necessary, including DCASR Counsel, to assess the likelihood of delivery, the financial strength of the firm, and the impact of suspension on the contractor and the Government. It is anticipated that the analysis will usually be performed prior to suspending or reducing progress payments.

c. There will be cases where there is an urgent need to prevent payment at the amount requested by the contractor. In these cases the ACO may perform his analysis after entering the code into the computer. An urgent need to prevent payment would exist if, for example, the contractor's financial condition had deteriorated precipitately (as in bankruptcy) or the contractor suffered a loss of production capacity which would preclude completion of contract work, or the contractor was known to have abandoned the contract work. In these cases the ACO should follow his use of the codes with a formal written determination within 3 days of entering the code. If the determination cannot be made within 3 days the ACO shall document the file with his proposed action and the date by which he expects to make the determination.

d. If the ACO suspects that the contractor will be rendered unable to continue work or to deliver the contract end-items by the suspension or reduction of progress payments, then he shall present the issue to a Board of Review in accordance with 90.16. If the ACO has already stopped payment in accordance with subparagraph c above, then the 3-day period is flexible if a Board of Review is sought. However, since the ACO's act of stopping payment is a suspension within the meaning of FAR 32.503-6, the Board of Review should meet as soon as practicable.

e. Since the "Reduce Payment" code is designed to permit the ACO to alert the computer that the contractor's Progress Payment Request may not be paid as requested and must be reduced, the use of the code will apply to all requests received after the code is entered in the computer. Consequently, it should be used only when the ACO anticipates that it will be necessary to reduce subsequent requests. The ACO should not use the "Reduce Payment" code to reduce only the instant Progress Payment Request on which he is working.

f. The "Reduce Payment" code differs from the "Stop Payment" only in the fact that it need not be removed in order for the ACO to authorize payment.

g. ACOs shall not use the "Stop Payment" or "Reduce Payment" code as a matter of course or to ensure that they receive all Progress Payment Requests for their authorizing signature.

32.593-9 Terminated Contracts

(a) Except as noted in (b) below, the entitlement of a contractor to Progress Payments normally ceases with complete termination of the contract. Therefore, immediately upon receipt of a complete termination notice, the ACO shall always input into the automated system an "R" code for contracts terminated for convenience, and an "S" code for contracts terminated for default.

(b) Progress Payments mailed (or otherwise dispatched) prior to the effective date of the termination for convenience are payable if otherwise proper and correct. The standards used to determine whether to pay such an outstanding Progress Payment request are the same standards used for pre-termination Progress Payments. When the ACO has been able to rely upon the contractor's representation prior to the termination for convenience, no pre-payment audit would be required. However, ACOs should be alert to unusual circumstances in approving Progress Payment requests after a termination for convenience. In all cases, the ACO shall coordinate with the cognizant TCO prior to approving the request.

(c) In those circumstances where the ACO decides to disapprove the Progress Payment request or to reduce the amount thereof, the ACO shall discuss the matter with the contractor and provide the contractor with a final decision, in accordance with normal Progress Payment procedures. The TCO shall be kept informed of the situation and afforded an opportunity to attend any meetings or discussions.

(d) Progress Payment requests submitted on contracts terminated for default, or mailed or dispatched after the effective date of a complete termination for convenience, are not payable and shall be returned to the contractor. In the case of terminations for convenience, the contractor should be advised to contract the TCO concerning a partial payment request.

(e) In the case of contracts only partially terminated, either for convenience or default, the ACO shall ensure that the contract price of limitation of obligation in the data base used by the automated system is adjusted, in order to prevent possible overpayment of Progress Payments. Pending calculation of the revised price/limitation of obligation, the ACO shall immediately enter an "R" code in the system, so that the ACO may manually determine whether the Progress Payment is payable. In addition to calculating the effect of the termination on Progress Payment limits, the ACO should be particularly alert to the effect partial terminations may have upon the estimated cost to complete the contract.

32.593-10 Management of Contracts With Multiple Progress Payment Rates

Because of legislation, a number of contracts are under administration that include a progress payment rate applicable to the original unamended contract, and another rate or rates applicable to work under change orders or amendments to the contract. (These multiple rates are in addition to the differing rates customarily used for U.S./FMS procurements.) The following procedures shall be used for the management of contracts with these multiple progress payment rates.

a. Each portion of a contract with a separate progress payment rate shall be considered as a separate "lot." (If any portion of a contract is subject to a flexible progress payment rate, that portion must be kept in its own lot since a flexible rate may change over time.) The ACO shall establish a separate progress payment request number series for each lot, and shall instruct the contractor to use the applicable series when submitting progress payment requests. The contractor shall also be instructed to segregate the costs and liquidations for each lot separately.

b. Progress payment requests under contracts with multiple rates will be manually processed. For each lot under the contract, the ACO shall request a pre-signing authorization in accordance with

32.593-7. The contractor shall be advised to submit its progress payment requests to the ACO. The ACO shall verify the accuracy and completeness of each request; approve the request, as appropriate; and if it is payable, forward four ACO-signed copies to the disbursing officer for payment.

c. For each lot under these contracts, the ACO shall maintain current records showing, applicable to that lot, the price, obligation(s), the payment and liquidation rates and the limitation(s) on payment. The ACO shall also maintain a log for each lot showing, by date and number, the progress payment requests received; the contractor's claimed incurred and paid costs; the ACO's disposition of the requests, including amounts approved for payment; and the date of forwarding for payment, or return to the contractor. The ACO shall also record liquidations in that log.

d. Periodic reviews shall be scheduled and performed for each lot in accordance with the time frames and procedures in 32.592 and 32.594. However, in lieu of the DLA Form 1634 data input and UYFM03 alerts, the contractor categorization or review date shall be entered in a Contract Management Division register and suspenses shall be established to ensure performance of the reviews. These reviews shall include coordination with the disbursing officer to ensure that the ACO and disbursing officer records match on lot prices, obligations, payments, liquidations, etc.

32.591 PERIODIC REVIEWS OF PROGRESS PAYMENTS

(HIGH VULNERABILITY: 32.594)

32.594-1 General

a. The basic purpose of periodic reviews of progress payments is to determine whether the contractor is complying with the requirements of the Progress Payments clause, whether the Government's interests are, will continue to be adequately protected, and whether the Government may continue to rely upon the contractor's Progress Payment Request certification.

b. The ACO is responsible for performing or arranging for the performance of the periodic reviews required below, and for making the final decision to continue to pay, or reduce, or suspend, progress payments. This responsibility is not altered or modified in any way by the actions or advice of technical specialists such as price/cost or financial analyst, auditors and industrial specialists or by the mechanics of payment such as the automated progress payment system.

c. In discharging this responsibility the ACO should make the most efficient use of available resources. Region and DCASMA/PRO managements are encouraged to assist by establishing overall plans for the most effective use of available resources. These plans should be established in coordination with the cognizant DCAA management to avoid inefficient use of resources or duplication of work. This shall not preclude ACOs from requesting special reviews or inquiries concerning progress payments whenever the ACO determines such to be necessary.

d. In general, the reviews required below will be planned and conducted by the price/cost analyst. The price/cost analyst is responsible for obtaining the input of other technical specialists (such as the industrial specialist, financial analyst, or auditor), as appropriate, and for preparing a coordinated report to the ACO. However, the ACO may, whenever deemed appropriate, communicate directly with the technical specialist to obtain whatever information is necessary for administration of progress payments.

e. Except when delay is authorized at a management level above the ACO, each periodic review shall be performed as scheduled or upon receipt of the UYFM03 Contract Administration Progress Payment Review Report. Because periodic reviews are the primary method of protecting the Government against overpayment or monetary losses, delays should be authorized only in the most unusual circumstances.

32.594-2 Requirements for Periodic Review

a. Each contractor with unliquidated progress payments shall as a minimum be reviewed in accordance with the schedule established under 32.592-3b, by use of the procedures in 32.594-4 below, to insure that:

(1) The accounting system is adequate for progress payment purposes; and

(2) The contractor's financial condition is sufficient to finance completion of the contracts and liquidate outstanding progress payments.

b. Except as provided in paragraphs c. or d., or in 32.594-6 below, each contract or order with an unliquidated progress payments balance (not each progress payment request), shall be reviewed in accordance with the schedule established under 32.592-5 below, to determine:

(1) That the costs reported by the contractor are in accordance with the progress payment clause;

(2) That the contractor's "Estimated additional cost to complete", line 12b and "costs of items delivered. . .", line 20a, are accurate; and

(3) That all other information stated by the contractor on the Progress Payment Requests is complete, accurate, and reliable.

c. If a contractor is in category I and if the sum of the Unliquidated Progress Payments balances of all contracts with the contractor (or business unit) is less than $100,000, then no review of the individual contracts or orders is required.

d. If the contractor is in category I or II and if the sum of the Unliquidated Progress Payment balances of all contracts with the contractor (or business unit) is less than $300,000, then every other review may be skipped. That is, contracts for a category I contractor will be reviewed every two years rather than every year, and contracts for a category II contractor will be reviewed once a year rather than every six months.

e. Neither reduction in review in c. or d. above shall apply to PPSRs. Whenever exercising the authority of c. and d. above, the ACO shall record on the DLA Form 325 the total Unliquidated Progress Payments, the date of the last review, and the next scheduled review date.

32.594-3 Disposition of Results of Periodic Reviews of Progress Payments

a. Upon completion of the periodic reviews required by 32.594-2 or 32.594-6, the ACO shall make a determination that:

(1) The contractor's progress payment system, or method for preparing progress payment requests, is a reliable basis for continued approval of progress payments; or

(2) The progress payment system or method is not a reliable basis for continued approval of progress payments

b. This determination shall be recorded in Section E and the Remarks section of the DLA Form 325. As appropriate, DLA Form(s) 1634 shall be forwarded to DS&FM to make changes in the Master File.

c. The ACO shall request a Board of Review if the determination in a. above:

(1) May endanger the contractor's performance of Government contracts (see 90.16); or

(2) Is different from the recommendations of the auditor and the progress payments received during the review period amount to $500,000 or more (see 90.01); or

(3) Is based upon an initial PPSR (Progress Payment System Review, see 32.594-6) or is a change in approval status based upon a PPSR, and the amount of unliquidated progress payments is 10 million dollars or more.

d. If the ACO determines that the contractor's method for preparing progress payments request, or progress payment system, is not reliable he shall unless special protective arrangements have been established as provided in e. below, notify the contractor that prepayment reviews will be required until the reliability of the contractor's method or system (and of his certification of the results of such method or system) is established, and shall use the DLA Form 1634 to input "R" codes to insure that progress payments are not paid without prepayment reviews. The ACO shall immediately demand repayment of any overpayments discovered, in accordance with DLAM 8105.1, 32.6. Since FAR provides specific procedures for deferral or installment payment of debts, the practice of allowing contractors to reduce future progress payments to offset the debt, is forbidden.

e. When the nature of the defects permit, ACOs are encouraged to explore with the contractor methods of limiting the need for prepayment reviews, pending restoration of reliability in the contractor's methods or system. For example, a contractor may agree to limit the kinds of costs for which progress payments are requested in order to avoid cost collection defects in the accounting system. In situations where special arrangements are substituted for prepayment reviews, the ACO shall make appropriate adjustments in the frequency of periodic reviews as necessary to verify compliance with the special arrangements.

32.594-4 Procedures for Contractor (Accounting and Financial) Reviews

a. The financial condition of each contractor with unliquidated progress payments shall be reviewed in accordance with paragraph c. below at least annually, except that with the specific approval of the Director, Contract Management, a contractor in strong financial condition may be reviewed biennially. Without exception, the accounting system of each contractor with unliquidated progress payments shall be reviewed at least annually. These periodic reviews of the contractor's financial condition or accounting systems may be requested together or as separate reviews as the ACO deems necessary.

b. Where the ACO does not have a record of the methods by which the contractor generates the "estimate to complete" line 12b. and "Cost of items delivered. . ." 20a, the auditor should be requested to provide as part of the accounting systems report, a brief outline of the contractor's methods and an opinion on the accuracy thereon. Subsequent requests for periodic reviews of accounting systems should request confirmation of the continuing accuracy of the outline previously furnished and the auditor's current opinion thereon.

c. The review of the contractor's financial condition shall follow the broad guidance of DFARS 32.173 and 32.174, and the ACO's specific decisions, concerning the depth required and data to be obtained. DCAS reviews of financial conditions shall not duplicate the duties of the DCAA auditor. Except when authorized under special circumstances by agreement of the respective DCAA branch manager and CM division chief, in-plant financial reviews of the contractor's books and records shall be performed by the DCAA auditor.

32.594-5 Procedures for Periodic Contract Reviews

a. When requesting a periodic review from Financial Services the ACO should forward a DLA Form 1542 accompanied by a DLA Form 325 with Item 1, Section A and Section C completed. In those instances in which the ACO determines that Financial Services input is not required, the ACO shall prepare a memorandum to the file setting forth his conclusions concerning the issues in 32-594-2b., and identifying the evidence upon which his conclusion is based. This memorandum shall be accompanied by the relevant workpapers recording the ACO's analysis. As a minimum, the Financial Services review and report shall address the issues in 32.594-2b. and if not encompassing a Contractor Accounting and Financial Review, shall cite the date of the last such review. Upon completion of the review, Finanical Services shall complete Part a. and b. of Section D of the DLA Form 325 in addition to the data required above, and shall return the 325 with the report, to the ACO. The completion of parts c. and d. by the evaluator is optional at the discretion of the ACO, who shall indicate the need for the data by a "yes" in the corner of each block.

b. Upon receipt of the price analyst's report, or upon completion of his own analysis the ACO shall complete Part E and record his decision in accordance with 32.594-3. When the results of a particular contract review cast doubt upon the reliability or accuracy of the contractor's statements or the safety of other progress payments, the ACO shall not wait for a scheduled review or receipt of a UYFM03 but shall arrange for further immediate reviews.

32-594-6 Criteria for Progress Payment System Reviews

a. In lieu of the individual contract reviews required by 32.594-2b. above, the ACO may elect to institute a Progress Payment System Review (PPSR) for contractors meeting the following criteria:

(1) The contractor has been placed in category I on the DLA Form 325.

(2) The contractor is in sound financial condition and is not experiencing losses that significantly affect the financial condition.

(3) The contractor's accounting system is stable, and is acceptable for all costs for progress payment purposes.

(4) There are no open accounting or cost questions which would affect the allowability or allocability of costs for progress payment purposes.

(5) The contractor submits at least 36 progress payment requests per year.

(6) Any other criteria established by the region Director of Contract Management are met.

b. A PPSR shall consist of:

(1) A review of the contractor's stated procedures in accordance with 32.594-7 below; and

(2) A test of the output of the contractor's progress payment system by a review of a sample of the progress payment requests submitted by the contractor, in accordance with 32-594-8 below.

c. The PPSR shall be initiated by an ACO request to Financial Services requesting a PPSR and stating any additional special requirements.

d. The price analyst shall integrate the results of the various technical specialist reviews into a single PPSR report which shall include a summary of the quantity of defects found vs acceptance/rejection criteria, the results of the procedures review required by 32.594-7 and, the opinion of the technical specialists concerning the relevant portions of the progress payment systems. The report shall also identify the quantity and dollar amount of progress payments in the universe (see 32.594-8e(2)).

32.591-7 Procedural Review Portion of PPSR

a. For contractors meeting the criteria in 32.594-6 above, the Government should be aware of the procedures used to collect costs and data to prepare the progress payments requests. Therefore, the ACO should request the contractor to provide to the ACO and auditor, a written outline of the methods by which progress payment data are collected, and details as to how the Progress Payment Request data items, Estimate to Complete (12b), and Costs of Items Delivered (20a), are calculated.

b. The price analyst, with the concurrence of the ACO, and in coordination with the other technical specialists (such as the financial analyst, auditor and I/S) shall designate responsibilities for performance of specific portions of the procedural review, in accordance with the skills and regular responsibilities of the technical specialists. If the price/cost analyst's coordination with the auditor discloses that DCAA has performed a similar current review as part of their overall audit program, then the analyst will adjust the PPSR plan to avoid unnecessary duplication of effort.

c. The initial review of the contractor procedures shall be in sufficient depth to identify:

(1) Inherently unacceptable procedures.

(2) Potential sources of inaccurate data.

(3) Potentially weak procedures, i.e., those with poor audit trail, or those relying upon accounting records not part of contractors normal accounting or management records, or those with potential difficulties in detecting prejudicial adjustments or alterations in data, etc.

d. Subsequent reviews of contractor procedures will be intended to insure that the Government is aware of and has copies of the most current stated procedures and that no unsatifactory procedures have been introduced.

32.591-8 Test of Output of Contractor's Progress Payment System

a. The review of a sample of progress payments submitted by the contractor is intended to determine the:

(1) Degree of contractor compliance with stated procedures.

(2) Actual strength and reliability of the procedures used.

(3) Actual accuracy of the progress payment requests and underlying data.

b. The price analyst with the concurrence of the ACO and in coordination with other technical specialists (such as the financial analyst, auditor, and I/S) shall be responsible for the detailed establishment of parameters necessary for the output test such as lots, sample sizes, and characteristics to be tested, as described below.

c. In order to insure the statistical validity of the sampling procedures (and therefore the reliability of decisions made on the basis of the sample results), the following procedures for determinations of sample sizes and selection of sampling plans shall be used.

d. Sampling may be conducted either retroactively or prospectively. Retroactive sampling is the selection of a sample from the progress payment requests already submitted, during a prior period. Prospective sampling is the identification of the sample to be taken from the progress payments to be submitted during a future period. In both methods the sampling process involves:

(1) Determining characteristics to be tested and, establishing lot sizes;

(2) Selecting inspection level, determining sample size code letter, and selecting the sampling plan;

(3) Determining the sample size and the acceptance/rejection number;

(4) Pulling the sample(s); and

(5) Examining the sample for the relevant characteristics and scoring the sample.

e. *Determining Characteristics to be Tested and Establishing Lot Sizes.*

(1) The term "characteristics" means those aspects of a progress payment request or of the contractor's system which may be tested for the purpose of determining contractor compliance with the progress payments clause. Progress payment characteristics for sampling and testing purposes may be such things as amount claimed as paid costs, amount of the contractor's estimate to complete, etc. The quality of the contractor's progress payment system is measured by the accuracy with which the tested characteristics reflect the true value. For example, how closely the above characteristics reflect the actual paid costs, or actual amont necessary to complete.

(2) It is also necessary to distinguish between "universe" and "lot" in determining lot sizes:

"Universe" means the quantity of progress payment requests submitted by the contractor since the last review. (For initial reviews the universe shall be the quantity submitted in the last 6 months.)

"Lot" means the group(s) of progress payment requests, within the universe, having substantially the same significant characteristics.

(3) Individual lots shall be formed within the universe by segregating progress payments requests by origin, or characteristics to be tested, (not by progress payment dollars or contract size). The concept of sampling is based upon an assumption that the sample reflects the whole. The more homogeneous the lot is, the more reliable that assumption becomes. Therefore, the number and size of lots should reflect the degree of uniformity or diversity in business units' progress payment systems. In addition, particular aspects of a progress payment system may differ in the degree of uniformity, and therefore the need for homogeneity within a sample may require different sized lots for the samples used in testing different aspects of the system. For example, a contractor may have an extremely accurate, highly secure, mechanized system for collecting costs for progress payments, which is used by all business units at a particular location. As a result, the lots formed for testing accuracy of costs claimed could be extremely large in size and few in number. However, this same contractor could permit each business unit to use its own method of estimating costs applicable to items delivered (Line 20a), which would require the lots used in testing the accuracy of these estimates to be much smaller in size and more numerous.

f. *Selecting Inspection Level, Determining Sample Size Code Letters and Sampling Plan.* If no defects, either critical, major or minor have been found in the last three PPSRs, and there are no known or suspected problem areas in the system, the reduced inspection level may be used. In all other cases the normal inspection level shall be used. Using the lot size(s) from e. above and the inspection level, the sample size code letter is chosen from Table I of 32.594-9. If the contractor's progress payments system has been acceptable for the last three reviews, then double sampling may be used. (Note that if under doubling sampling, a second sample selection is required when using prospective sampling the second sample shall then be chosen retroactively from the progress payments on hand.)

g. *Determining the sample size and the acceptance/rejection number.*

(1) Sample sizes shall be determined using Table II of 32.594-9 based upon the sampling size code letter, inspection level, and sampling plan.

(2) The acceptance/rejection number shall be determined from Table III of 32.594-9 upon the same basis as the sample size.

h. *Pulling the sample(s).* Samples shall be drawn at random within lots using the COPPER IMPACT selection programs or other valid selection procedures. The basic assumption of sampling is that the sample is representative of the whole. Any actions which bias the sample will destroy the validity of that assumption. For this reason no contract or progress payment request will be specifically included or executed from its appropriate lot. Where the ACO has doubts about a specific contract or progress payment request, the resulting review shall not form a part of the PPSR unless also included by the random selection. However, the detection of a critical defect, at any time, shall be grounds for an immediate determination of an unacceptable system.

i. *Examining the Sample for Relevant Characteristics and Scoring the Sample.*

(1) The basic criteria for categorization of defects discovered in individual progess payment requests are as follows:

(a) Critical defect:

(i) Any indication of fraud or false claims;

(ii) Any indication that deviation from the contractor's stated procedures (upon which the Government is relying in approving progress payments) was deliberate on the part of the contractor's management or employees;

(iii) Any failure of the contractor to correct a defect identified in a previous system review.

(b) Major defect:

(i) Any contractor error or omission that resulted in a progress payment request amount greater than the proper amount by more than .1% of the progress payment amount properly requested or $100.00, which ever is greater;

(ii) Cumulative number of minor defects amounting to more than 10% of the total number of progress payment requests submitted.

(c) Minor defect:

Any contractor error or omission that is not critical or major. (As a matter of equity, errors detrimental to the contractor's interests should also be brought to the contractor's attention. If these errors do not prejudice the Government's interests or increase Government administrative costs, they need not be counted for (ii) above).

32.594-9 Sampling tables for progress payments reviews

TABLE I

Lot or batch size	Inspection Level	
	Reduced	Normal
2 to 8	A	A
9 to 15	A	B
16 to 25	B	C
26 to 50	C	D
51 to 90	C	E
91 to 150	D	F
151 to 280	E	G
281 to 500	F	H
501 to 1200	G	J

TABLE II

Sample Sizes

Code	Single Normal	Double Normal	Single Reduced	Double Reduced
A	2		2	
B	3	2/2	2	
C	5	3/3	2	
D	8	5/5	3	2/2
E	13	8/8	5	3/3
F	20	13/13	8	5/5
G	32	20/20	13	8/8
G	50	32/32	20	13/13
I	80	50/50	32	20/20

TABLE III

Acceptance/Rejection Criteria

Sample Plan	Inspection Level	# of Major Defects Found	
		Acceptable	Unacceptable
Single	Normal	0	1
Double	Normal		
1st Sample		0	1
Cumulative		1	2
Single	Reduced	0	1
Double	Reduced		
1st Sample		0	2
Cumulative		0	2

32.595 GOVERNMENT TITLE

(HIGH VULNERABILITY: 32.595)

32.595-1 References

a. FAR 32.503-14, Protection of Government Title.

b. FAR 32.503-15, Application of Government Title Terms.

c. FAR 32.503-16, Risk of Loss.

d. DAR Appendix E-525, Government Titles.

32.595-2 Definitions

a. Security Agreement: an agreement which creates or provides for a security interest.

b. Security Interest: an interest in personal property or fixtures which secures payment or performance of an obligation. It includes the retention of title by a seller of goods notwithstanding delivery to the buyer "conditional bill of sale", liens, chattel mortgages and the transfer of accounts receivable. If the debtor defaults in payments, the holder of the security interest may take possession of the property and sell or otherwise dispose of it to satisfy the secured indebtedness or obligation.

c. Preexisting Security Interest: security interest of a creditor created prior to the date of the Government contract and which the creditor has perfected by the filing of a financing statement as required by a state Uniform Commercial Code.

d. After-acquired Security Interest: security interest of a creditor created subsequent to date of the Government contract and which the creditor has perfected by the filing of a financing statement as required by a state Uniform Commercial Code.

e. Financing Statement: statement describing types or items of property in which a creditor has a security interest, signed by both the creditor and the debtor and containing their respective addresses.

f. Title: legal ownership.

g. Subordination Agreement: an agreement whereby a creditor of a contractor subordinates any security interest he may have in the progress payments inventory to the rights of the Government in the same property. (See format for Post-award Subordination Agreement at 32.595-5. Deviations required to meet a particular situation may be made in coordination with local Counsel. DLA Forms 622, Subordination Agreement (Applicable to one Government Contract) and 620, Subordination Agreement (Applicable to more than one Government Contract) are not authorized for use in the situations described in this section because of their preaward provisions.)

32.595-3 General

a. The "Title" provision of the progress payments clause vests title to progress payments inventory in the Government effective the date the contract is signed. However, there has been an increase in the number of bankruptcies in which the Government's title has been challenged by the bankrupt contractor's creditors. The resulting litigation has several consequences: Delay in obtaining the end item; loss of material and/or money if court judgment is against the Government or if it is compelled to settle out of court; and depreciation and loss of the materials' usefulness to the Government during litigation, regardless of outcome.

b. The conflict of claims to the progress payments inventory is catalyzed by the contractor's bankruptcy but has its roots in previous circumstances.

(1) The contractor has failed to understand adequately the terms and conditions of progress payments clause and/or his loan agreements. The contractor must certify on each request for progress payment that there are no encumbrances against the property to which the Govenment has title. However, it occasionally happens that contractors give a security interest in the progress payment inventory without being aware of it. It is a standard practice for financial institutions to write into their loan agreements a provision to acquire a security interest in all existing and future inventories during the life of the loan. The Government's progress payment inventory must be specifically exempted for this provision of the loan agreement for it to conform with the intent of the progress payments clause and the certification of the Progress Payment Request.

(2) The Government jeopardizes its own rights.

(a) It fails to check adequately into the possibility of preexisting security interests. The Uniform Commercial Code requires lenders to file financing statements with an office of record. Such statements are available for public inspection. Additionally, DAR E-214 and DFARS 32.174 provides an extensive list of documents which the Financial Analyst may request of the contractor to analyze his financial position.

(b) It fails to obtain subordination agreements which confirm the legal superiority of the Government's title. This failure often results from a belief that the Government claim will prevail over all others. However, this is not always the case. The courts decide each case on its own merits, but certain patterns are apparent. In the absence of a subordination agreement, the courts usually will honor a Government claim over a creditor's after-acquired security interest. The courts may uphold a creditor's preexisting security interest against a Government claim unsupported by a subordination agreement. This is a strong possibility where the Government can be proven to have been aware of an existing security interest (either through assignment of claims, postaward surveillance, contractor disclosure, or other means) and failed to act upon its knowledge.

32.595-4 Procedures

a. For procedures in obtaining subordination agreements during the preaward period, see 9.1.

b. When the ACO receives a contract containing the progress payment clause, he should consider holding a postaward orientation conference immediately to discuss the contractor's responsibilities under the clause (see 42.5-5b).

c. If a security interest is given by the contractor during the life of the contract, the ACO will obtain a subordination agreement to protect the Government's progress payment inventory.

d. When a postaward financial review reveals the existence of a security interest in the progress payment inventory, the ACO will determine the need for a subordination agreement after consultations with Counsel and other concerned members of the team. The ACO should base his decision on an analysis of several conditions, such as:

(1) Ability of the contractor's accounting system to support progress payments.

(2) The contractor's present financial position and projections for his future position during the contract term.

(3) The type of contract and the nature of the work being done under the contract. (A firm fixed-price type is rarely compatible with developmental or state-of-the-art work.)

(4) The contractor's production capabilities and projections for completion of contract in the required time in accordance with specifications.

e. The ACO should not delay the obtaining of a subordination agreement until the contractor's financial problems imperil the completion of the contract. It is more difficult to protect the Government's interest when a contractor is obviously in trouble.

f. It is not considered appropriate or advisable for Government personnel to attempt to obtain a subordination agreement directly from the contractor's creditor. Since the contract exists between the Government and the contractor, initial discussions should be restricted to the contracting parties. If the ACO believes that the creditor may draw unnecessarily alarming inferences from a Government request for subordination, he should consider a meeting with both the creditor and the contractor to clarify the situation.

g. A creditor's refusal to execute a subordination agreement may indicate serious trouble in the contractor's financial position. An inquiry into the reasons surrounding the creditor's refusal may yield information about the contractor's condition which would make suspension of payments necessary to protect the Government's interest. However, progress payments should be suspended only after careful consideration in accordance with the guidance in DAR E-524/FAR 32.503-6 and paragraph 32.590-4e of this manual.

h. The ACO after acknowledging receipt of a subordination agreement shall place the original in the official file, and provide a copy to the contractor, creditor, and the financial analyst.

32.595-5 Format for Postaward Subordination Agreement

SUBORDINATION AGREEMENT

__________, a corporation of __________ hereinafter called the Debtor, has entered into Contract Numbers __________ with the United States of America (Department of Defense and its Agencies), hereinafter called the Government, for the furnishing of defense supplies and expects to enter into future contracts with the Government for the furnishing of defense supplies. Said contracts include Progress Payment clause. Pursuant thereto, the Debtor has requested the Government to provide progress payments, which request the Government is willing to grant in accordance with the terms of the said clause and upon condition that __________ hereinafter referred to as the Creditor, agrees to subordinate to the rights of the Government under or arising out of said contracts and future contracts, any and all present and future recorded or perfectable liens under the Uniform Commercial Code or other liens or interests of the Creditor with respect to any parts, material, inventory or work in process, and other property to which the Government has title pursuant to paragraph (d) of said Progress Payment clause. In consideration of the making of progress payments to the Debtor by the Government, the undersigned agrees as follows:

Any and all present and future recorded or perfectable liens under the Uniform Commercial Code or other liens or interest of the undersigned Creditor with respect to any of the parts, material, inventory or work in process, and other property to which the Government has title pursuant to paragraph (d) of said Progress Payment clause, are fully subordinated to the rights and interests of the Government under or arising out of the aforementioned contracts and future contracts.

If any person, firm, corporation or entity other than the Debtor becomes obligated to perform said contracts or any part thereof, whether by operation of law or otherwise, any and all present and future rights of the Creditor shall remain fully subordinated to the rights of the Government.

The Subordination Agreement shall not be affected by any action extending the time of performance of said contracts or by making of any amendment or modification authorized by the terms of said contracts.

The Creditor hereby certifies that it has not given or executed any prior Subordination Agreement with respect to its claims against the Debtor except as follows:

The Creditor hereby agrees to direct the debtor (a) to mark its records in accordance with this Subordination Agreement and (b) to confirm receipt of notice by signing in the place indicated below.

This Agreement shall inure to the benefit of and may be enforced by the United States.

Executed the ______day of 19______.

TWO WITNESSES:

______________________________ ______________________________
(Creditor)

______________________________ BY ______________________________

I, __________, certify that I am the __________ Secretary of the Corporation named as Creditor herein; that __________ who signed this agreement on behalf of the Creditor, was then __________ of said Corporation; that said Agreement was duly signed for and in behalf of said Corporation by authority of its governing body, and is within the scope of its corporate powers.

Corporate
Seal

____
(Secretary)

Receipt of a copy of the above agreement is acknowledged.

____
(Debtor)

BY ______________________________

____
(Title)

Receipt of a copy of the above Subordination Agreement is acknowledged.

THE UNITED STATES OF AMERICA

BY ______________________________

____
(Contracting Officer)

ADDRESS: ______________________________

32.6 CONTRACT DEBTS

32.6-1 References

a. FAR 32.6, Contract Debts.

b. FAR 52.232-17, Interest.

c. DFARS 32.6, Contract Debts.

d. DAR Appendix E, Part 6, Contract Debts-Interest-Deferred Payments.

e. DLAM 7000.1, Accounting and Finance Manual, Chapter 12, Claims.

f. DAR 7-104.39, Interest.

32.6-2 General

a. DLAM 7000.1, chapter 12, consolidates the many publications relative to procedures governing the processing of claims for and against the United States. A complete and current copy of DLAM 7000.1 is maintained at Comptroller. In the event an ACO needs to consult procedures in chapter 12 and a copy is not available, he should contract Comptroller Code FB for the appropriate section.

b. Primary or support responsibilities of the ACO are set forth in DLAM 7000.1, chapter 12. It is essential that, as a minimum, the ACO review and thoroughly understand sections I, II, and X of this chapter. These responsibilities cover claims of the United States against contractors, claims of the United States against debtors involved in bankruptcy and other insolvency proceedings, and claims against the United States. In addition, sections IV, V and XII pertain to responsibilities in claims of the United States arising out of irregularities and discrepancies, tort claims, and other claims against the United States not elsewhere identified and should be referred to when such actions are contemplated.

c. The intent of DLAM 7000.1, chapter 12, is to provide accounting control of any situation which indicates a potential indebtedness to the Government. Consequently, knowledge gained by any CAO personnel that a contractor may be indebted to the Government should be communicated to the ACO who will furnish Comptroller documentation required to establish an account receivable. The account receivable can be established for an estimated or nominal amount when the fixed amount of debt is not known and adjusted at a later date if required.

32.6-3 Responsibility for Collection. Contract debts generally fall into three categories:

a. Erroneous payments or overpayments made by the disbursing officer in excess of the amounts to which the contractor was entitled under the terms of the contract at the time of such payments. Collection of these debts is the responsibility of the disbursing officer.

b. Debts resulting from the assessment of reprocurement costs. These are collected by the Accounting and Finance Office of the PCO.

c. All contract debts under active contracts other than those identified in subparagraphs a and b above. Collection of these debts is the responsibility of the ACO. This includes debts resulting from reinspection costs, under DAR 7-103.5 (Inspection) or FAR 52.241-2 (Inspection of Supplies).

32.6-4 Demand Procedures. Upon receipt of advice from the PCO, or other functional elements, or upon his own determination that a demand for payment of a contract debt should be placed on a contractor, the ACO shall immediately make demand to the contractor for payment of the contract debt, DAR E-608 and FAR 32.610 discuss the demand letter and further requires that interest be applied to the amount unpaid beyond 30 days from the date of the demand letter (or any earlier date established pursuant to the contract). The demand letter shall include the following statement: "We are required by DoD policy to charge interest at an annual rate of ___________ percent on any part of the $___________ which remains unpaid as of the close of 30 days from the date of this letter. The same policy requires that interest charge, if it becomes applicable, start as of the date of this letter." The letter should also advise contractors to make checks payable to the specific agency maintaining the account, e.g., DCASR, Philadelphia, ATTN: Accounting and Finance Officer. It is to be noted that checks should not be made payable to the Treasurer of the United States. Prior to issuing the demand letter, the ACO shall coordinate with Comptroller to obtain the current rate of interest in effect as of the date of the demand letter. A copy of the demand letter will be forwarded to Comptroller, ATTN: Accounting and Finance Officer with a return receipt required. After its return, the receipt shall be placed in the official contract file. Collections effected by ACOs shall be submitted to Comptroller within 1 working day after receipt.

32.6-5 Reports of Uncollectable Debts. When the ACO determines a contract debt to be uncollectable, he will so advise Comptroller who is responsible for reporting uncollectable debts to HQ DLA, ATTN: DLA-CFF.

32.6-6 Closeout of Contracts. After submission of the required documentation to support a determination of an uncollectable debt, contract closeout procedures will be initiated (see 4.804).

32.671 BANKRUPTCY REPORTING

32.671-1 References

a. DFARS 32.671, Bankruptcy Reporting.

b. DAR E-626, Bankruptcy Reporting.

c. DLAM 7000.1, Accounting and Finance Manual, chapter 12.

32.671-2 General. The ACO is responsible for coordinating all actions by elements of the DCASR, DCASMA, DCASPRO and for keeping the PCO advised of all significant events. In an actual bankruptcy, the ACO will be the official contact with the Receiver or Trustee in Bankruptcy, as appropriate. All communications will be cleared through the ACO who will in turn coordinate with the Counsel at the DCASR. In the event of the complete termination of the contract for convenience, coordinating responsibility will be assumed by the TCO. If the termination for convenience is partial, the TCO will be advised promptly of bankruptcy proceedings affecting the termination settlement.

32.671-3 Procedures

a. *Financial Difficulties.* The ACO will immediately notify the cognizant DCAA auditor, the PCO, cognizant security office, when applicable, the paying activities, and other elements of the Region, DCASMA, DCASPRO by the most expeditious means.

b. *Actual Bankruptcy*

(1) The ACO will:

(a) Immediately notify the cognizant DCAA auditor, the PCO, the paying activities, Counsel, cognizant security office, when applicable, and other elements of the DCASR, DCASMA or DCASPRO.

(b) Determine the names, addresses, and telephone numbers of the local Government officials concerned, e.g., sheriff, marshal, as well as the Receiver and Trustee in Bankruptcy, if assigned.

(c) Determine the status and desired disposition of Government-owned property, if applicable, and direct the contractor to dispose of the property accordingly.

(d) Take action to assure the protection of Government-owned property pending its disposition.

(e) Consult with the DCASR Counsel as to all future actions.

(f) Provide the DCASR Counsel with information needed for the report of bankruptcy required by DLAM 7000.1, chapter 12.

(2) The DCASR Counsel will:

(a) Make necessary reports.

(b) File proof of claims on those claims in which the DCASR has a direct interest, e.g., unliquidated progress payments, overpayments, and loss of Government property.

(c) Represent the contracting officer and the Region in communications and consultations with the Department of Justice, the U.S. Attorney, attorneys for creditors, and the bankruptcy court, as appropriate.

(d) Establish liaison with the Legal Counsel for the procuring activity on claims and problems of mutual interest as relates to a bankruptcy action.

32.7 LIMITATION OF COST OR FUNDS UNDER COST-TYPE CONTRACTS

32.7-1 References

a. FAR 32.7, Contract Funding.

b. FAR 52.232-20, Limitation of Cost.

c. FAR 52.232-21, Limitation of Cost (Facilities).

d. FAR 52.232-22, Limitation of Funds.

e. DFARS 32.7, Contract Funding.

f. DAR Section 1, Part 20, Limitation of Cost or Funds Under Cost Type Contracts.

g. DAR 7-203.3, Limitation of Cost or Funds.

32.7-2 **General.** The status of contract funds is essential information for the procuring office, the program manager, the comptroller, and the contract administration office. Based on an analysis of contract funds status, fund requirements are updated, need for new funds is forecasted, decisions are made which affect budget estimates and overrun/underrun conditions can be anticipated. There are several ways by which the Government should be advised of the status of funds. The most common is the requirement in the limitation of cost/funds clauses discussed herein. In addition, there are certain special reports which may be required by the contract. Examples of such reports are the CFSR, CPR, CCDR, or the C/SSR. These reports are discussed in parts 42.302, 90.06, 90.07, and 90.08.

32.7-3 **Limitation of Cost/Funds Clauses.** DAR 7-203.3, FAR 52.232-20 and FAR 52.232-22 require the contractor to notify the contracting officer in writing if at any time the contractor has reason to believe that: the costs which he expects to incur in the next 60 days (may be varied from 30 to 90 days), when added to previous costs incurred, will exceed 75 percent (may be varied up to 85 percent) of the estimated cost of the contract, or; the total cost to the Government, exclusive of fee, will be greater or substantially less than the estimate. FAR 52.232-21 requires such notification when costs he expects to incur in the next 30 days, when added to previous costs incurred, will exceed 85 percent of the estimated cost or the total cost will be greater or substantially less than the estimate. The contractor must also give his revised estimate of the total cost for performance of the contract. Generally, ACOs' actions with regard to evaluating funds under contracts which include these clauses should normally be limited to ensuring receipt of and evaluating such notices from the contractor.

32.7-4 Evaluation

a. Normally, the ACO will request the Financial Services element to utilize the pricing team concept (see part 15.805) to evaluate contractor's notification submitted pursuant to the limitation of cost/funds clauses. The evaluation should include as a minimum:

(1) An examination of the difference between actual progress under the contract and the amount of funds expended.

(2) Identification of the factors which could affect subsequent variations.

(3) An evaluation of any contractor plans or actions to balance progress with the expenditure rate.

b. The DLA Form 1069, Funds Analysis Control, will be used to record the evaluation of the contractor's notice submitted pursuant to the clause (see paragraph 32.7-6).

32.7-5 Procedures

a. When a contract includes a limitation of cost or funds clause, the ACO will:

(1) Establish suspense controls by assuring that an R9 Coded Remark 49 is entered in accordance with section A-600.

(2) Closely monitor the receipt of required reports in order to assure timely submission of meaningful cost/funds information to the PCO.

(3) Immediately upon receipt of a fund notice from the contractor, forward an advance copy (so marked and without comments) to the PCO (unless it was forwarded directly to the PCO by the contractor).

(4) Request Financial Services element to evaluate the notice and to complete applicable items on the supporting DLA Form 1069 (see paragraph 32.7-4).

(5) Notify the PCO within 10 workdays that the ACO has received the funds notice, that he will be performing a review, the date on which he expects to provide the review with his recommendations to the PCO, and any other comments he desires to make. If the ACO has sufficient data on hand to evaluate the funds notice and provide recommendations within 10 workdays, he should do so.

b. In the event the required notice is not submitted, the ACO will remind the contractor of this requirement and actively pursue receipt thereof. If the contractor is dilatory to the extent that the notice will be so late as to serve no purpose, the ACO will initiate an independent study of the contract funds and notify the PCO of the results.

c. When the ACO determines that there is a potential or existing overrun, he will so notify the PCO immediately providing his best estimate of the amount of additional funds required to complete the contract.

d. When the ACO determines that excess funds are available, prompt notification thereof will be furnished to the PCO. When this determination is made as a result of his independent review, the ACO will review his findings with the contractor and obtain his written concurrence before notifying the PCO. When authority has been delegated to the ACO, he will prepare and execute a supplemental agreement deobligating funds considered excess. In this regard, Headquarters, Naval Material Command, has delegated blanket authority to DCAS ACOs to execute contract modifications providing for the deobligation of unexpended dollar balances excess to known contract requirements on Navy cost-type contracts citing Navy appropriations. This delegation applies only to Navy cost-type contracts, and to those Navy fixed-price type contracts where funds are obligated or committed pursuant to provisioning procedures or where funds for engineering services and related support are involved. After final payment to the contractor, the PK9 will serve to identify to the PCO those small dollar balances which may remain obligated in the contract.

e. When agreement as to the availability of excess funds cannot be reached with the contractor, the reasons for the contractor's nonconcurrence will be furnished to the PCO along with the ACO's findings and recommendations.

f. The procedures described in subparagraphs d and e above shall be applied to any contract situation where funds eligible for deobligation are identified.

32.7-6 Preparation of the DLA Form 1069. The following instructions pertain to the preparation of the DLA Form 1069 and are coded to the numbered blocks which appear on the form:

a. GENERAL: Upon receipt of the CFSR or the funds notification from the contractor, the ACO will complete blocks 1 through 5 and block 10a (see instructions for block 10a below). If Financial Services is not requested to make an analysis, the ACO will complete blocks 9, 11 and 12. However, if any analysis by Financial Services is requested, the pricing team concept will be used, as appropriate, and blocks 9, 10b, c, and d, 11 and 12 will be completed by the price analyst responsible for the evaluation and pertinent comments will be included in block 15. The form will be returned to the ACO who will complete blocks 13 and 14. Block 15 will also be used by the ACO to record additional comments relative to the results of the analysis. Blocks not included in the instructions below are self-explanatory.

b. SPECIFIC:

BLOCK 2. If the review pertains to the CFSR, the period of the report will be entered. If the review pertains to a contractor funds notification under a limitation of funds/cost clause, the period is from the contract date to the date of the notification.

BLOCK 4. If the review pertains to a reimbursable action, enter the Document Control Number (DCN). The DCN is required for reporting reimbursable hours pertinent to direct procurements by foreign governments, FMS and civilian agency contracts, e.g., NASA and DoE.

BLOCK 6. Enter the dollar amount of funds (both cost and fee) obligated through the modification number indicated.

BLOCK 8. Divide the corresponding figures in block 7 by those in block 6 and enter percentages.

BLOCK 9. Enter the percentage (estimated) of physical contract completion as of the date of the review.

BLOCKS 10a, b, c, and d. When the ACO requests a review and analysis by Financial Services, enter the date this review was requested and the date the analysis is returned. If the review is not deemed necessary, enter "N/A" in the requested space and give the reason for this decision in block 15. Likewise, when Financial Services is involved in the analysis, the date when inputs are requested and received from the other elements will be entered by the price analyst in blocks 10b, c, and d.

BLOCKS 11 and 12. If excess funds or overrun is indicated as a result of the review, enter the best estimate of the dollar amount.

BLOCK 15. This block will include comments pertinent to the analysis performed which resulted in the dollar amounts entered in block 11 or 12. The ACO's comments will include a statement enumerating those elements utilized in estimating the physical completion percentage entered in block 9 when it is significantly different from the percentage in block 5 including an explanation of the difference. This block should also contain comments as to whether or not the CFSR (when contractually required) conforms to contractual requirements and if the contractor's actual and forecasted expenditures are valid. If a modification was issued to add or delete funds, the date of execution will also be reflected.

BLOCK 16. Upon signature, the ACO will forward the form to the PCO.

32.8 ASSIGNMENT OF CLAIMS

32.8-1 References

a. Assignment of Claims Act of 1940, as amended, 31 U.S.C. 3727, 41 U.S.C. 15.

b. FAR 32.8, Assignment of Claims.

c. FAR 52.232-23, Assignment of Claims Clause.

d. DFARS 32.8, Assignment of Claims.

e. DAR 7-103.8, Assignment of Claims.

32.8-2 General. The above statute permits contractors to instruct the Government to make contract payments to a third party, provided the third party is a financing institution.

32.8-3 Procedures

a. The statute and the clause require the assignee to be a "bank, trust company or other financing institution, including any Federal lending agency". Therefore, the ACO should only accept assignments which name such a financing institution on the face of the instrument and notice. The ACO should also be aware that an Assignment of Claims has to be for a specific contract; to be to a single party; and must be for all monies remaining due under the contract. If the ACO has doubts about the acceptability of an assignment, the matter should be immediately discussed with Region Counsel prior to acceptance. The Disbursing Officer should also be immediately notified if the ACO is questioning an assignment.

b. In addition to distributing the copies of the Notice or Release of Assignment to the Disbursing Officer in accordance with the FAR instructions, the ACO should also immediately notify the Disbursing Officer via telephone or facsimile transmission. For all Notice or Release of Assignments distributed to the Disbursing Officer, the ACO shall forward an appropriate Return Receipt Requested Form PS 3811. After its return, the receipt shall be placed in the official contract file.

c. For each contract for which the ACO receives a Notice or Release of Assignment the ACO shall insert a CAR remark. Under DBMS the ACO shall use the appropriate standard remarks:

"Payments Assigned, Debt Offset limited."

"Assignment of Claim __________ Released date."

Under MOCAS the ACO shall insert the above as Non Standard Narrative Remarks.

33 DISPUTES AND APPEALS

33-1 References

a. Contract Disputes Act of 1978 (41 U.S.C. 601, *et seq.*).

b. FAR 33, Disputes and Appeals.

c. FAR 32.6, Contract Debts.

d. FAR 52.233-1, Disputes.

e. DFARS 33, Disputes and Appeals.

f. DFARS 32.6, Contract Debts.

g. DFARS Appendix A, Armed Services Board of Contract Appeals.

h. DAR 1-314, Disputes and Appeals.

i. DAR 7-103.12, Disputes.

j. DLAM 7000.1, Accounting and Finance Manual, Chapter 12, Claims.

33-2 General

a. The guidance contained in this part reflects the requirements of the Contract Disputes Act of 1978. Contracts or BOAs entered into after 1 March 1979 are subject to the requirements of the Contract Disputes Act. ACOs should assure that contracts or BOAs awarded after 1 March 1979 contain the Disputes clause at DAR 7-103.12 or FAR 53.233-1. For contracts awarded prior to 1 March 1979, the contractor may elect to process appeals *or* to proceed under the provisions of the 1978 Act with respect to any claim pending before the contracting officer on 1 March 1978 or initiated thereafter. ACOs administering BOAs which were issued prior to 1 March 1979 should request the PCO to revise the BOA to incorporate the current Disputes clause.

b. The contracting officer (PCO, ACO or TCO) shall decide all questions subject to the disputes procedure for which he has authority to act. In any matters on which the PCO has retained authority and responsibility, the PCO issues the final decision. Otherwise, the ACO will issue the final decision on atters for which he has authority to act without rther review or approval by the PCO.

33-3 Procedures

a. *Certification of Claims.* Upon receipt of a claim over $50,000, the ACO should assure that the claim includes the contractor certification required by the Contract Disputes Act that the claim is made in good faith, that the supporting data are accurate and complete to the best of the contractor's knowledge, and that the amount requested accurately reflects the contract adjustment for which the contractor believes the Government is liable. Any suspected fraudulent claim or misrepresentation of fact shall be immediately reported to DCASR Counsel.

b. *Payment of Interest.* The Contract Disputes Act provides that the Government shall pay interest on the amount found due on contractor's claims from the date the claim is received until the Government makes payment. Accordingly, controls shall be established to ensure that contractors' claims are processed expeditiously. Additionally, partial settlements should be effected in appropriate instances to preclude the accrual of interest on elements where no disagreement exists.

c. *Final Decisions*

(1) The ACO will utilize the specialized skills of Production, Quality Assurance, Audit, Counsel, Financial Services, and, when necessary, confer with the purchasing officer prior to issuing a final decision. However, the final decision must be that of the ACO. Prior to issuing a final decision, the ACO may deem it appropriate to send the contractor a "Notice of Intention to Issue a Final Decision" giving the contractor at least 15 days to settle the dispute in order to avoid litigation.

(2) Final decisions for claims of $50,000 or less must be issued within 60 days after receipt of the claim. For claims exceeding $50,000, the ACO within 60 days after receipt, must either issue a final decision or notify the contractor when a final decision will be issued. The Contract Disputes Act requires that a final decision shall be issued within a reasonable time.

(3) Final decisions are to be prepared in accordance with FAR 33.011 and must include notification to the contractor that he may appeal the decision to the ASBCA within 90 days, or directly to the U.S. Claims Court within 12 months of the date the final decision is received. When the amount in dispute is $50,000 or less, the final decision will include notification that the ASBCA's accelerated appeal procedure may be elected by the contractor. When the amount in dispute is $10,000 or less, the final decision will include notification that the contractor may elect to appeal under the ASBCA's expedited small claims procedure.

(4) The ACO will submit his proposed final decision to DCASR Counsel for review. A copy of the final decision will be forwarded to the contractor by certified mail, return receipt requested, or by any other method that provides evidence of receipt.

(5) An amount determined to be due the United States in a final decision by the ACO is a claim against the contractor. See FAR and DFARS 32.606, DLAM 7000.1, chapter 12; and part 32.6 of this manual for collection procedures.

d. *Contractor Appeals*

(1) After an appeal is filed either with the ASBCA or the U.S. Claims Court, all future actions thereon will be under the guidance and direction of the trial counsel who will be responsible for all arrangements for the defense of the Government's position. Immediately on receiving a notice of an

appeal the ACO will forward it to DCASR Counsel. The counsel will promptly:

(a) Assess the Government's position and advise the ACO.

(b) Assemble all pertinent facts and documents.

(c) Assist the ACO in complying with DFARS, appendix A, part 2.

(d) Prepare and conduct the Government's case at hearings before the ASBCA or U.S. Claims Court.

(2) Within 15 days of receipt of an appeal, or notice that an appeal has been filed, the ACO shall provide the trial attorney with the information required by DFARS, Appendix A, part 2, rule 4. The trial attorney will review the ACO's information and transmit the appropriate information to the ASBCA and the contractor.

(3) When the contractor's appeal is of a PCO's final decision and the ACO receives a notice of appeal from the contractor, the ACO will forward the notice to the PCO and concurrently coordinate with the DCASR Counsel. The Counsel will assist the ACO in assembling all available facts and documents required for forwarding to the PCO.

(4) When a contractor appeals from findings and decisions of both the ACO and the PCO on different matters arising out of the same contract, and consolidation of the appeals is directed by the ASBCA or the U.S. Claims Court, the purchasing office will normally prepare and conduct the Government's case.

(5) If the ASBCA or U.S. Claims Court decision orders further negotiation, such negotiations will be accomplished by the contracting officer who issued the final decision, except when the court orders a conversion from a default termination to a convenience termination settlement. Then the TCO will negotiate the settlement.

e. *Contract Status in the CAR.* Contracts involved in disputes and appeals which satisfy the criteria in paragraph A-100.3a(3) of this manual may be moved from section 2 to section 3 of the CAR in accordance with paragraph A-200.6. Dormancy Code BCA—Board of Contract Appeals or CIL—Contractor in Litigation will be used.

33.70 CONTRACTOR CERTIFICATION OF REQUESTS FOR ADJUSTMENT OR RELIEF EXCEEDING $100,000

33.70-1 References

a. DFARS 33.70, Certification under Section 813 of Public Law 95-485.

b. DFARS 52.233-7000, Certification of Requests for Adjustment or Relief Exceeding $100,000.

c. DAR 1-342, Contractor Certification of Requests for Adjustment or Relief Exceeding $100,000.

d. DAR 7-104.102, Certification of Requests for Adjustment or Relief Exceeding $100,000.

33.70-2 General

a. Section 813 of the 1979 Defense Appropriations Act (P.L. 95-485) requires that any contract claim, request for equitable adjustment to contract terms, request for relief under Public Law 85-804, or similar request which exceeds $100,000 must be certified at the time of submission. The certification must be signed by a senior company official in charge at the plant or location involved and certify that the claim or request is made in good faith and that the supporting data are accurate and complete to the best of such official's knowledge and belief.

b. The above certification requirement is intended to discourage Defense contractors from submitting frivolous and inflated claims thus avoiding a needless waste of Government resources.

33.70-3 Applicability

a. The P.L. 95-485 certification requirement is applicable only to DoD contracts. DAR clause 7-104.102 or DFARS clause 52.233-7000 which contain instructions for compliance with the certification requirement should be included in all DoD contracts expected to exceed $100,000. However, exclusion of the clause from the contract does not obviate the need for certification in accordance with the statute.

b. The following contractual actions are among those which must be certified in accordance with Section 813 of PL 95-485.

(1) Requests for relief under PL 85-804

(2) Unilateral contract change proposals

(3) Termination settlement claims

(4) Claims for cancellation of multi-year contracts

(5) Cost Accounting Standards proposals

c. The following actions are among those which are *not* subject to the PL 95-485 certification requirement:

(1) Requests for routine contract payments, e.g., payments for accepted supplies and services, routine vouchers under cost-reimbursement contracts, and progress payment invoices.

(2) Final adjustments under incentive provisions of contracts.

(3) Pricing proposals for orders under BOAs.

(4) Pricing proposals for provisioned item orders.

(5) Engineering change proposals (Note: If pursuant to the Changes clause, the Government orders the contractor to perform in accordance with the ECP, any subsequent claim for equitable adjustments of $100,000 or more would be subject to the PL 95-485 certification requirement.)

(6) Economic price adjustment

(7) Final overhead rate proposals

(8) Proposals for definitization of letter contracts

33.70-4 Execution of Certificate

PL 95-485 states the certificate must be executed by a senior official in charge at the plant or location involved. The apparent legislative intent of this requirement is that the certificate must be signed by the senior official *in charge* at the location where the contract is being performed. Signature by lower level company contracting officials is not acceptable. There are instances however where the senior official need not be physically located in the plant or location involved, e.g., a plant manager would not certify proposals/claims which are prepared by a senior official who is located at the corporate headquarters office.

33.70-5 Procedures

a. Upon receipt of a contractor claim or request for relief which is subject to the PL 95-485 certification requirement, ACOs will ensure the request or claim is accompanied by a properly executed certificate as defined in DAR 7-104.102 and DFARS 52.233-7000. If the certificate is not included or if it is not signed by a senior official, the contractor will be informed or reminded of the certification requirement and advised that the request or claim will not be processed further until a properly executed certificate is received.

b. Questions regarding the applicability of the PL 95-485 certification requirement to contractual actions other than those listed in 33.70-3b. and c above should be referred to the DCASR Office of Counsel.

c. In the event an ACO has reason to doubt the accuracy of a contractor's certification, the matter should be reported in accordance with Part 3.

33.70-6 Comparison with Other Certification Requirements

a. In addition to the PL 95-485 certification requirement, two other significant contractor certifications are required by the Disputes Act (PL 95-563) and the Truth in Negotiations Act (PL 87-653). There are several important differences among these certifications, the most significant of which are highlighted in paragraph 33.70-7.

b. The PL 95-485 certification is in addition to that required by the Truth in Negotiations Act since the PL 95-485 certificate is required at the time of *submission* of a claim or request while the Truth in Negotiations certificate is not required until price agreement is reached.

c. The Disputes Act certificate may be used to comply with the PL 95-485 requirement if:

(1) The certificate is signed by a senior company official in charge at the plant or location involved, and

(2) The submission of a claim or request coincides with the inception of a dispute.

33.70-7 Certification Requirements

	TRUTH IN NEGOTIATIONS (P.L. 87-653)	DISPUTES ACT (P.L. 95-563)	1979 APPROPRIATIONS ACT (P.L. 95-485)
CERTIFICATION	Supporting Data are accurate and complete.	Claim made in good faith; supporting data accurate and complete to best of knowledge and belief; amount requested accurately reflects adjustment for which contractor believes Government liable.	Claim or request made in good faith, supporting data accurate and complete to best of knowledge and belief (and added by DAR: amount requested accurately reflects adjustment for which contractor believes Government liable.)
Dollar Threshold	Mandatory over $500,000; Discretionary between $25,000 and $500,000.	Over $50,000.	Over $100,000.
When Filed	At time agreement reached on price.	At time of submission of the claim.	At time of submission of claim or request for equitable adjustment.
Signing Official	Anyone authorized to act for contractor.	The contractor, a senior company official, or someone having overall responsibility for contractor's affairs.	Senior Company official in charge at plant or location.
Applicability	By statute. All contracts with DoD, NASA; by regulation: Most Federal agencies.	All contracts except those awarded to a foreign government or agency thereof or international organization or subsidiary body thereof if the head or any agency has determined that the applicability of the Act to the Contract would not be in the public interest.	DoD contracts only.

35.010 SCIENTIFIC AND TECHNICAL REPORTS

35.010-1 References

a. FAR 35.010, subject as above.

b. DFARS 35.010, subject as above.

c. DoD Instruction 5200.21, Certification for Access to Scientific and Technical Information (DDR&E).

d. DoD 5220.22-M, Industrial Security Manual for Safeguarding Classified Information.

e. DoD 5220.22-R, Industrial Security Regulation, paragraph 2-116j.

f. DLAM 4185.3, Registration for Scientific and Technical Information Services of the Department of Defense.

35.010-2 General

a. DTIC is the central facility of DoD for secondary distribution of technical reports resulting from RDT&E sponsored by DoD. DTIC also maintains records of current research effort at the work unit level which are available to Government contractors and subcontractors. DTIC is a repository for these technical documents, stores them for retrieval, announces them for official use, and supplies them to Government agencies and their registered contractors. DTIC is primarily concerned with the handling and processing of documents rather than their technical content.

b. Procedures for obtaining certification for access to scientific and technical information are set forth in DLAM 4185.3. Contractors, subcontractors and potential contractors interested in participating in the program should be encouraged to contact DTIC, Building 5, ATTN: DTIC DDRA, Cameron Station, Alexandria, Virginia 22304-6100, for general information.

35.010-3 Procedures

a. Inquiries for specific information received by the CAO will be referred to the ACO for reply in accordance with provisions of DLAM 4185.3.

b. Certification on the DD Form 1540, Registration for Scientific and Technical Information Services, will be accomplished by the PCO unless responsibility has been specifically delegated to the ACO. A copy of the delegation will be provided DTIC, ATTN: DDRA, for any certifications executed by the ACO.

42.2 RETENTION OF NORMAL, OR ASSIGNMENT OF ADDITIONAL FUNCTIONS

42.2-1 References

a. FAR 42.202, Assignment of Contract Administration.

b. FAR 42.203, Retention of Contract Administration.

c. DFARS 42.203, Retention of Contract Administration

d. DAR 20-703.3, Retention of Normal, or Assignment of Additional Functions.

42.2-2 General. Contracts are assigned to contract administration offices for performance of all FAR/DFARS 42.302 functions that may be required unless specifically withheld by the delegating office.

42.2-3 Procedures

a. When the purchasing office withholds specific contract administration functions on individual contracts pursuant to FAR 42.203, the contract administration office will assure that purchasing office approval is at a level above that of the individual purchasing contracting officer. Contract administration offices should make every effort to retain performance of FAR/DFARS 42.302 functions.

b. On individual contracts, the purchasing office may delegate to the contract administration office functions which are not designated in FAR/DFARS 42.302 as contract administration functions. Acceptance of such functions by contract administration offices is not permitted without HQ DLA approval (ATTN: DLA-AO) unless otherwise provided in this manual. Acceptance of such non-contract administration functions do not serve and will not be considered as the basis for requesting additional resources but will be accommodated within the DCASR's existing resources.

c. The functions listed in FAR/DFARS 42.302 which may be delegated at the option of the purchasing office, will be accepted by Contract Administration Offices when delegated.

42.204 SUPPORTING CONTRACT ADMINISTRATION

42.204-1 References

a. FAR 42.204, Supporting Contract Administration.

b. FAR 44.205, Special Surveillance.

c. FAR 42.505, Postaward Subcontractor Conference.

d. DFARS 42.204, Supporting Contract Administration.

e. DAR 20-704, Supporting Contract Administration.

f. DAR S3-601, Government Property at Alternate Locations of the Prime Contractor and Subcontractor Plants.

42.204-2 *General.* Under most prime contracts, a substantial amount of the work required is either subcontracted or assigned to another plant or facility belonging to the prime contractor. Quite often, it develops that these "remote locations" are some considerable distance away from the prime contractor facility to which the prime contract was awarded. Also quite often, it is advantageous to the Government, or even necessary, to maintain surveillance over one or more aspects of the performance taking place at the remote locations (e.g., Quality Assurance, Production, cost monitoring, etc.). Accordingly, buying activities (where they have retained administration of the contract) or "prime" CAOs (i.e., those CAOs with cognizance of the prime contractor facility to which the contracts were awarded) may request supporting contract administration (SCA) from the CAOs cognizant of the remote locations (i.e., "supporting CAOs").

42.204-3 Initiating SCA Requests

a. In determining the need for a SCA request, consideration must be given to the value, technical complexity and importance (cost, schedule, reliability, or safety) of the work to be performed at the remote location, as well as any unusual payment or financing provisions pertinent to that work.

b. SCA requests may be initiated for single functions only, e.g., Quality Assurance; or, for multiple functions, such as Quality Assurance, Production, Property, Specialized Safety, Engineering and Transportation. Where assistance for only one function is being requested, the letter of request will be prepared and forwarded by that functional element. If more than one function is involved, the ACO will prepare and forward the request for assistance for all. To provide for the opportunity to consolidate those requests, each functional element is required to coordinate with the ACO to determine whether a consolidated request should be made before making their own individual request.

c. The letter of request should specify the type and extent of assistance required by each function, e.g., "Contract Administration—review and provide comments/recommendations on DD Forms 375," or, "Contract Administration—consent to the placement of subcontracts." Broad, general terms, such as "total administration" or "production" are not to be used.

d. The letter of request should be accompanied by a sufficient number of copies of the prime contract (or pertinent portions thereof, if the whole is too bulky to reproduce), supporting documentation (e.g., the price negotiation memorandum, approved contractor's policies and procedures, etc.), and the contractor's purchase order, subcontract, or intracompany transfer work order (including any pertinent specifications or technical information). However, a request for supporting contract administration should not be delayed solely for lack of documentation when there is an urgent need for assistance; the request should be forwarded immediately, with the supporting documentation to be provided later as it becomes available.

e. If any FMS requirements are included in the work for which SCA has been requested, all information identified in DFARS 42.204(a) is to be provided with the SCA request.

42.204-4 Sending SCA Requests to Overseas Activities

a. Addresses for the overseas activities from whom SCA is needed may be found in DoD 4105.59H, Section II, Part 2. If none of the addresses (or overseas locations) listed are appropriate for the particular situation, the PCO should be contacted and asked to provide the identification of the overseas activity to whom the request should be directed.

b. The following are special considerations which should be given to overseas SCA requests:

(1) Due to the difficulties in communicating with overseas activities, great care must be given to making the SCA request itself very clear and intelligible, and making the supporting documentation complete and current.

(2) Travel plans, names and approval dates for contractor personnel who will visit the overseas plant or facility should be provided to the office performing the overseas SCA.

(3) The ACO, PCO, and supporting CAO should reach a detailed understanding (through a PAOC or other means) or who (names, organizations, and addresses) is responsible for which functions, and where.

(4) DLA has contract administration cognizance over only a relatively few areas outside of CONUS; however, DLA personnel are occasionally requested to perform work in areas outside of those assigned to the Agency. All requests for overseas SCA to be performed by DLA personnel outside of those areas for which the Agency has been assigned cognizance are to be forwarded to DLA-DD(AM) for final approval before any such request is acted upon.

c. All requests for SCA directed to foreign governments who charge for such services are to be processed by the ACO, regardless of whether the request is multiple or single function. Before making the actual request, the ACO is to first advise the PCO of the anticipated need for the services and provide a cost estimate. (This may necessitate preliminary contact with the foreign government by the CAO functional element desiring support to determine availability of the support and to gather cost information.) Once the PCO's approval and the appropriate fund cite have been received, the ACO may then finalize the request.

42.204-5 Special Considerations for SCA Requests on Subcontracts

a. The only supporting functions which should be requested for subcontracts are those necessary to evaluate the prime contractor's management of his subcontracts. In no sense should a SCA request be reviewed as relieving the prime contractor of its management responsibilities.

b. The supporting CAO will limit its activities on SCA requests for subcontracts to observing the subcontractor's performance and assessing the effectiveness of the prime contractor's management of the subcontract. Reports of deficiencies or unsatisfactory conditions are to contain a complete description of the facts of the matter accompanied by recommendations for corrective action by the *prime contractor*. These reports should be forwarded immediately to the prime ACO.

c. Processing of subcontractor submissions under the Patent Rights clause in the prime contract will be handled in accordance with Part 27 rather than as a supporting contract administration function.

42.204-6 Receipt of SCA Requests

a. At the supporting CAO, the assigned functional specialists are to review the SCA request, and contact the prime CAO immediately if the request seems incomplete and/or deficient, or if it requires clarification. The supporting CAO is to maintain open and free communications with the prime CAO to ensure the timely exchange of information regarding contract performance. Unless the SCA request specifically provides for the contrary, all matters regarding contract disputes will be referred to the prime ACO. A complete description of the facts should be provided, along with a clear recommendation for resolution of the dispute.

b. If the supporting CAO determines that SCA requests for lower-tier subcontractors or facilities are necessary, those requests will be initiated by the supporting CAO in accordance with 42.204-3 above, with notification of the action accomplished being promptly provided to the prime CAO.

c. For control purposes, all SCA requests received will be entered into the CAR. All SCA requests with Contract Administration requested, regardless of whether they are single or multiple function, will be entered into Part A of the CAR with Functional Limitation Code 06 and any applicable Standard Coded (R9) Remarks. For all other SCA requests, except "Quality only," the concerned functional elements are responsible for ensuring the entry of the SCA requests into Part C of the CAR. (Quality only SCA requests will not appear in the CAR.)

d. Actions to close out the SCA requests should be accomplished immediately after the requested functions have been accomplished. Notification to the prime CAO of close-out actions and files disposition should be carried out in accordance with Part 4.804.

42.204-7 Notification to the Prime Contractor

a. The prime contractor should be notified whenever an SCA request has been made. The notification should specifically identify which functions support has been requested for.

b. If only a single function SCA request was made, then that functional element is responsible for notifying the contractor. If a multiple function SCA request was made, then the ACO will notify the prime contractor.

c. Care must be taken in making these notifications that the prime contractor does not gain the impression that it has been relieved of any responsibilities for managing its subcontractors, or for compliance to any of the terms and conditions of the prime contracts. The notification should instead make clear that the SCA request has been made only to satisfy the Government's needs for information.

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42.206 REASSIGNMENT OF CONTRACT ADMINISTRATION AND DISBURSING RESPONSIBILITIES

42.206-1 References

a. FAR 42.206, Reassignment of Contract Administration.

b. DFARS 42.205, Designation of the Paying Office.

c. DAR 20-707, Reassignment of Contract Administration and Disbursing Responsibilities.

d. DLAR 5410.2, Economic Adjustment Assistance to Defense-Impacted Communities.

42.206-2 Policy. FAR 42.206 sets forth conditions under which ACOs may reassign contracts for administration. DFARS 42.205 specifies disbursing responsibilities for DCAS-administered contracts.

42.206-3 Procedures

a. *Contract Modification.* Responsibilities of the ACO in each of the conditions requiring transfer of contract administration and disbursing functions are outlined below:

(1) *Initial Incorrect Assignment.* Upon receipt of an incorrectly assigned contract, COF will request the ACO assigned for that purpose to issue the contract modification. Identification of the non-DCAS paying office, if required, will be requested from the PCO.

(2) *Reassignment of a Contractor to Another CAO.* The need to reassign a contractor to another CAO usually occurs as a result of a change in plant cognizance, the establishment/disestablishment of a CAO or a change in geographical cognizance of a CAO. Under any of these conditions, the ACO shall issue the modification.

(3) *Change in Place of Manufacture.* While ACOs are automatically authorized to issue unilateral contract modifications under (1) and (2) above, the PCO must either issue the modification or authorize the ACO to do so when a change in point of manufacture occurs during contract performance. If delegated by the PCO, the ACO will issue the modification. Consideration should be given to the requirement for an economic impact report as provided for in DLAR 5410.2.

b. *Distribution of Contract Modifications.* In addition to the normal distribution, the disbursing office which was incorrectly assigned will be provided a copy to insure any subsequent correspondence is routed to the proper disbursing office.

c. *Data System.* Changes to the data system are accomplished by DS&FM automatically upon receipt of modifications for those contracts under cognizance of the DCASR.

42.206-4 Transfer of Files

a. *ACO-Assigned Contracts*

(1) Upon receipt of a modification reflecting the transfer of an ACO-assigned contract to another CAO, COF will:

(a) Examine the official contract files to assure that all papers received are being forwarded.

(b) Request Production to forward their working files and request Quality Assurance to forward copies of key quality assurance performance data, clearly identified as such, to COF for transfer with the official contract file. (See subparagraph c below re transfer of property and DS&FM files).

(c) Forward the official contract files to the ACO for preparation of a summary (see subparagraph a(2) below).

(d) Upon receipt of ACO summary, assemble with official contract files and working files or copies and forward to the new CAO.

(2) To permit the new CAO to initiate prompt contract administration action, the ACO will prepare a brief summary of those complete and incomplete actions which the new ACO should be immediately aware of. Special consideration should be given to those actions which are not adequately reflected in the official contract files.

b. *Part B Contracts*

(1) Upon receipt of a modification reflecting the transfer of a part B contract, COF will:

(a) Obtain working files or copies from applicable functional elements.

(b) Forward the working files or copies, together with any other filed material available to COF, to the newly designated CAO.

(2) Since the official contract file for part B contracts is the disbursing file, transfer of this file is accomplished by DS&FM in accordance with DLAM 7000.1.

c. Part 6 (Property Administration) of the official contract file is transferred by the PA in accordance with DLAM 8135.1.

42.270 PERFORMANCE OF CONTRACT ADMINISTRATION SERVICES ON MILITARY INSTALLATIONS

42.270-1 References

a. FAR 42.204, Supporting Contract Administration.

b. DFARS 42.270, Contracts Requiring Performance of Contract Administration Services on Military Installations.

42.270-2 General

a. DFARS 42.270 was published to achieve a uniform structure for performance of Contract Administration Services on military installations. The basic DoD policy is that performance of Contract Administration Services on the same military installation by more than one Contract Administration Services activity ("mixed Contract Administration Services") is to be avoided.

b. There are essentially three situations involving Contract Administration Services on military installations; (i) Base, post, camp, or station contracts; (ii) Contractor with industrial operations located on the installation due to the availability of real estate; (iii) Contractors with operations located off-base, but also perfoming services on-base for a military activity on site (this activity may be a military laboratory which, for Command purposes operates with its own commander who is independent of the base or installation commander).

42.270-3 Performance

a. The installation commander is responsible for Contract Administration Services performance on the installation for base, post, camp, or station contracts.

b. DCAS is responsible for Contract Administration Services on contractors with industrial operations located on military installations due to the availability of real estate. However, the contractor's operations must be totally independent of the installation commander's authority.

c. For contractors with operations located off-base, but also performing services on a military installation, DCAS will administer the prime contract off base. The military Department receiving the on-base contractor service arranges for or performs the onsite Contract Administration Services functions. If not arranged by the buying office, the CAO should request performance of Contract Administration Services on the military installation via supporting contract administration assignment (FAR 42.204) to the military activity that is receiving the contractor goods or services. This latter circumstances applies to contractors performing at military laboratories on base. Contract Administration Services may be requested and performed for off base facilities under DCAS cognizance but the military laboratory remains responsible for providing its own on base Contract Administration Services support. DCAS will only perform those Contract Administration Services function required at the contractor's place of business off the military installation.

d. Any decisions involving Contract Administration Services performance on military installations that cannot be clearly determined pursuant to the above guidance should be referred to HQ DLA (ATTN: DLA-AO).

42.302 COST/SCHEDULE CONTROL SYSTEMS CRITERIA (C/SCSC)

42.302-1 References

a. DFARS 42.302(a)(71).

b. DFARS 52.234-7001, Notice of Cost/Schedule Control Systems.

c. DFARS 52.234-7002, Cost/Schedule Control Systems.

d. DAR 1-331(h).

e. DAR 7-104.87, Cost/Schedule Control Systems.

f. DLAM 8400.2, Contract Management Engineering Manual for DLA, Part 3-3.

g. DLAH 8315.1, C/SCSC Joint Surveillance Guide.

h. DLAH 8315.2, C/SCSC Joint Implementation Guide.

42.302-2 General

a. The C/SCSC have been developed for use in the management control of cost, schedule, and technical performance for selected acquisition programs (firm fixed-price contracts are excluded) which are estimated in the 5-Year Defense Program to require:

(1) A total cumulative financing for RDT&E in excess of $75 million.

(2) Cumulative production investment in excess of $300 million.

b. Rather than attempting to impose specific methods for management control upon defense contractors, C/SCSC allows contractors to use systems and procedures which are best suited to their needs so long as they meet the DoD requirements. Data from the contractor's management control system must:

(1) Indicate work progress.

(2) Properly relate cost, schedule, and technical performance.

(3) Be valid, timely, and auditable.

(4) Supply DoD managers with a practicable level of summarization.

c. Other terms may be used by the Military Departments in lieu of C/SCSC. Some Air Force contracts refer to the C/SPCS.

d. The inclusion of the C/SCSC clause in the contract requires the contractor to establish, maintain and use a C/SCSC system during the performance of the contract. Data required for delivery in conjunction with C/SCSC will be included in the DD Form 1423, Contract Data Requirements List, or in other clauses in the contract.

e. The stages of C/SCSC implementation which involve DCAS offices are as follows:

(1) *Evaluation Review.* An onsite examination of the contractor's proposed management control system, submitted in response to an RFP, is not normally required. Should the procuring activity decide that an onsite review will be performed, the DCAS office will provide a representative to assist the review team.

(2) *Demonstration Review.* After contract award, the contractor will be required to demonstrate that his system satisfies the criteria cited in the contract. A DCAS representative will be appointed as a member of the demonstration review team.

(3) *Memorandum of Understanding.* DoD Instruction 7000.2, Performance Measurement for Selected Acquisitions, paragraph IV C2 authorizes the use of a Memorandum of Understanding between the DoD and the contractor where it is anticipated that multiple contracts will be subject to the C/SCSC requirement. In such instances, the ACO cognizant of the contractor shall be responsible for the preparation, execution, and distribution of a Memorandum of Understanding based upon Demonstration Review Report and letter of validation provided by the lead command. Procedures governing the use of the Memorandum of Understanding are set forth in Joint Implementation Guide, paragraph 5-8.

(4) *Surveillance.* Throughout the life of the contract, the DCAS office and the resident contract auditor are primarily responsible for ensuring that the contractor continues to comply with the C/SCSC requirements of the contract. There are two phases in the surveillance effort. Phase I commences with contract award, while Phase II begins with acceptance of the contractor's system based on the demonstration review.

f. The OPI within DCAS for the C/SCSC program is the Systems and Engineering element of Contract Management. Normally, a PE will participate in the evaluation and demonstration reviews conducted by the procuring activity. Generally, the same individual will be designated as the surveillance monitor under the contract.

42.302-3 Procedures

a. The most significant contribution a DCAS office makes to this program is the technical input provided by the Engineering element; hence, their designation as the OPI. Notwithstanding, the ACO, as the one responsible for coordinating the efforts of all DCAS functional elements concerned with a specific contract/contractor, will distribute all C/SCSC reports and/or analysis of reports to assure that he and other interested elements in the DCAS office are aware of the information contained therein.

b. In those cases when the ACO does not participate in the validation of the contractor's C/SCSC system, he will be kept apprised of progress being made by the DCAS representative on the review team.

c. Provisions in the prime contract will identify subcontracts to which C/SCSC will be extended. When appropriate, supporting delegations will be accomplished promptly in accordance with FAR 42.204(c). Special requirements related to C/SCSC, such as surveillance assistance, will be identified in the delegation.

d. Postaward conferences will be held on all contracts containing C/SCSC provisions. Invitations to the conferences should be extended to the supporting ACO(s) and the respective functional element(s) for each subcontract which includes the C/SCSC requirement and for which supporting administration has been delegated.

e. During phase I of surveillance, the ACO will:

(1) Maintain close liaison with the DCAS and DCAA Demonstration Team Members to monitor the contractor's progress toward implementation. Even though the contractor's system has not yet been accepted, it is necessary that reports submitted during this period be verified for validity and completeness.

(2) Participate with the surveillance monitor in the preparation of a surveillance agreement with the procuring activity, taking into consideration the written system description provided by the contractor and referenced in the contract. Responsibilities of the DCAS office and procuring activity should be clearly defined.

f. During phase II of surveillance, the ACO will:

(1) Coordinate with the Production element in implementing a detailed program of surveillance so as to assess continuity and consistency in the operation of the contractor's system.

(2) Evaluate all changes in the contractor's management system for the purpose of identifying and appraising modifications thereto which are not in accordance with the criteria.

(3) Assure that recurring evaluations of effectiveness of the contractor's policies and procedures, selective tests of the contractor's internal data flow, and determination of the validity of external reports submitted to the Government are performed. The surveillance monitor, in coordination with the ACO and other functional elements, should prepare an internal agreement indicating which elements will prepare the analyses of the various required reports.

(4) Forward to the contract auditor a list of all reports to be submitted under the contract which require audit verification.

(5) Coordinate the efforts of the DCAS office team in identifying and correcting deficiencies in the contractor's system and ensure that the results of the team findings are made available to the contractor, the PCO and other interested DoD components.

(6) Review reports, including the CPR, submitted by the contractor and the analysis thereof prepared by the various DCAS office functional elements to ensure that anticipated overruns and underruns are identified, as well as other factors which may adversely impact upon contractor performance. Provide comment to the PCO when conditions warrant. When appropriate, request assistance from the Financial Services element.

(7) In coordination with the surveillance monitor, verify, as C/SCSC requirements arise, that the contractor's systems continue to comply with the criteria and contract provisions.

g. During phase I of surveillance, the cognizant DCAA audit office will provide a contract auditor for purposes of:

(1) Serving as a Demonstration Review Team member for the review of the accounting system and related areas (e.g., budgeting, variance analysis, and forecasting).

(2) Participating in monitoring contractor progress in assigned areas during C/SCSC implementation.

h. During phase II of surveillance, the contract auditor will be responsible for:

(1) Performing periodic reviews of the contractor's accounting system policies and procedures for compliance with performance measurements criteria, and contract provisions.

(2) Performing periodic reviews, on a selective basis, of the financial data contained in the various reports prepared by the contractor to determine whether it accurately reflects the information contained in the contractor's books and records.

(3) Performing periodic evaluations of the effectiveness of the contractor's financial policies and procedures.

(4) Preparing audit reports incorporating any deficiencies disclosed during surveillance reviews that cannot be resolved with the contractor. Such reports shall be addressed to the procuring activity through the ACO.

42.5 POSTAWARD ORIENTATION OF CONTRACTORS

42.5-1 References

a. FAR 42.5, Postaward Orientation.

b. DFARS 42.5, Postaward Orientation.

c. DAR 1-1800, Postaward Orientation of Contractors.

42.5-2 General

a. A mutual understanding between contractor and Government representatives of all contractual requirements and obligations is an essential key to successful contract performance. The PAOC provides an excellent opportunity to assure this understanding and to identify and resolve existing or potential problems. Additionally, the PAOC can create an atmosphere of Government solidarity where the ACO as the team leader can set forth ground rules for contract performance as well as for administration that should prevail during the entire life of the contract.

b. All part A contracts/BOAs will be analyzed to determine if postaward orientation is required. A conscious determination as to the extent and method of postaward orientation which would serve the Government's best interest will be made and justification therefor included in the contract file. Repetitive orders under BOAs, purchase orders with the same contractor, and orders under indefinite delivery type contracts which are assigned to Part A are exempt from the above requirement.

c. The initiation and conduct of a PAOC is normally the responsibility of the ACO, either as a result of his own review or at the request of another DCAS functional element. Additionally, the decision that a PAOC is required may be made by the PCO/program manager. Under these conditions, the PCO/program manager may elect to convene the conference himself or may request the ACO to make the necessary arrangements, as outlined below, and chair the conference.

d. The fact that a PAOC has been held does not necessarily mean that future conferences are not required. Future conferences may be required as a result of misunderstandings, redirection of effort through the change order procedure, contractor's performance, status reporting, or at any time the ACO determines the need.

42.5-3 Policy. Postaward orientation of contractors can take many forms depending generally on the type and complexity of the contract involved, the past history of the contractor, and the importance of the procurement. After a thorough analysis of the many factors involved, the ACO must make a decision as to the extent and method of postaward orientation required on a particular contract. The range of options available to him includes:

a. *Formal* PAOC. Factors which should be considered in the selection of contracts requiring a formal PAOC are outlined in FAR 42.502 and paragraph 42.5-5 of this manual. The ACO's evaluation should include examination of these factors and an indication from other DCAS functional elements involved that existing or potential problems may significantly impact on contract performance and are sufficient in scope to warrant a formal PAOC. The conduct of a formal PAOC should be limited to only the most complex, high-dollar value contracts, e.g., major weapons systems contracts, contracts containing C/SCSC provisions.

b. *Limited Postaward Conference.* The ACO may determine under certain conditions that while a contract does not warrant a full-scale formal PAOC, a limited or smaller conference with the contractor is required. In such cases, a limited PAOC including only the specific functional element(s) involved may be held. When it is determined that a limited conference will be held, the ACO may elect to participate in such limited conference or he may request the CA or concerned functional element to initiate and conduct the conference.

c. *Postaward Letter/Telephone Call.* The ACO may determine that while a formal conference with the contractor may not be warranted, there is need to bring to the contractor's attention one or more selected contract provisions. In these cases, the ACO or the appropriate functional element may elect to discuss these areas with the contractor by telephone or write the contractor a letter accomplishing this same objective. When the decision is made to discuss these areas with the contractor by telephone, in all cases a letter will be issued confirming the items discussed and any instructions provided. The postaward letter/telephone call is an economical method of contractor postaward orientation and should be used in lieu of a formal or limited PAOC whenever feasible.

d. *Postaward Orientation Not Required.* If a contractor has a clear understanding of his obligations, postaward orientation action may not be necessary. For example, recent satisfactory performance on other similar contracts could be the basis for a determination that further postaward orientation is not required. If a decision is made that postaward orientation is not required, the ACO will document the contract file with his reasons therefor.

42.5-4 Procedures. To supplement guidance contained in FAR 42.503 and DFARS 42.503-1 through -3, the following procedures for the accomplishment of varying degrees of postaward orientation are provided:

a. *Postaward Orientation Not Required.* When review of the contract/BOA indicates that postaward orientation is not required, this decision and reasons therefor will be recorded by the ACO on DLA Form 1533, Postaward Orientation Determination, and included in the official contract file. Coordination, if required, should be obtained from appropriate functional elements and indicated in part III of the DLA Form 1533.

b. *Postaward Orientation Required.* In cases where the decision is made that some form of postaward orientation is required, DLA Form 1533 will be annotated accordingly. The ACO will normally be responsible for making the necessary arrangements as outlined below:

(1) *Formal PAOC*

(a) Coordinate with the PCO, contractor, DCAS functional elements, and when appropriate, DCAA, to determine names of participants and solicit agenda items. The cognizant Industrial Security Specialist may be requested to attend the PAOC on an "as needed" basis.

(b) Establish date, time, and place of conference and notify all participants. Notice to the contractor will be provided by letter and should include the names of participants and a list of areas to be discussed. In all cases a copy of this letter will be forwarded to the PCO.

(c) Prepare an agenda based on items submitted by participating elements. Topics defined in FAR 42.502 and subjects contained in DD Form 1484, Postaward Conference Record, should be reviewed for possible inclusion as agenda items.

(d) Convene preconference meeting of Government representatives to discuss details of the contract and to establish a unified Government position for each agenda item.

(e) Act as Chairman during the preconference meetings and PAOC.

(f) Prepare summary record of PAOC for inclusion in the official contract file. Distribute copies to all participants and to the PCO, even if not a participant. DD Form 1484 or a narrative summary report may be used for this purpose. The summary report, when used in lieu of DD Form 1484, will indicate areas reviewed, problems encountered, remedial action taken, and significant conclusions. In all cases, the following statement will be included above the signature of the Chairman of the conference: "Nothing contained in this report nor discussed during the course of this conference shall be construed as amending the terms and conditions of this contract."

(g) Monitor the resulting action items generated to assure completion.

(2) *Limited PAOC*

(a) Coordinate, as required, with appropriate functional elements and establish that contract clarification warrants only a limited conference.

(b) Determine whether the ACO, the CA, or the functional element will conduct the conference. The conference chairman will determine names of participants and topics to be included on the agenda and will establish date, time, and place thereof and notify the ACO (if not the chairman) and participants as outlined in subparagraph (1)(b) above.

(c) The conference chairman will prepare an agenda and convene preconference meeting, if warranted.

(d) The conference chairman will prepare summary record of conference. See subparagraph (1)(f) above.

(3) *Postaward Letter/Telephone Call*

(a) Coordinate, as required, with appropriate functional elements and determine that extent of contract clarification required does not warrant either a formal or a limited conference and a letter or telephone call will suffice.

(b) Issue letter or place telephone call to the contractor identifying Government representative responsible for administering the contract and citing unusual contract requirements or providing clarifying instructions, as applicable. This may be accomplished by the ACO or the concerned DCAS functional element.

(c) When a telephone call is considered adequate for this purpose, the caller will prepare and forward within 10 days a letter to the contractor identifying date of conversation, parties thereto, instructions provided, and a summary of subjects discussed. Copies of all letters to a contractor with respect to postaward orientation should be forwarded to all those personnel who would have been invited if a PAOC had been held and to the official contract file via the ACO. In all cases where a postaward letter is sent the following statement will be included above the signature: "Nothing contained in this letter shall be construed as amending the terms and conditions of this contract."

42.5-5 Contracts Requiring Special Consideration

a. *Contracts Involving Aircraft*

(1) Except for follow-on contracts awarded to a contractor who has previously demonstrated a thorough understanding of contracts involving Government-owned aircraft, a PAOC should be held on all contracts involving the furnishing of a Government-owned aircraft. The PCO, the Flight

Operations representative and other DCAS team members, as appropriate, will be invited and encouraged to attend. The ACO, on a case-by-case basis and with the advice of the Government Flight Representative, will determine the need for conducting post award orientation on follow-on contracts or upon issuance of a contract modification involving an aircraft not anticipated at the time of award.

(2) All Government personnel should be made aware of the provisions of DLAM 8220.3, Flight Operations and Safety Manual for Contract Administration Services, and DLAM 8200.1, Procurement Quality Assurance Manual, paragraphs 4-112b(39), (40) and (41). Particular attention should be given to a thorough review of the contract provisions to assure that responsibilities, both those of the Government and the contractor, are fully covered. Contract deficiencies will be reported to the PCO for resolution (see paragraph 90.13-2b(1)

b. *Contracts with Progress Payments Provisions*

(1) When an ACO receives a contract with progress payments provisions, he should immediately ascertain the contractor's financial position. If a preaward survey or postaward financial review reveals a potential for contractor financial difficulty, the ACO should consider holding a PAOC to familiarize the contractor with his responsibilities under the progress payment clause. Members of the ACO team will be invited and encouraged to attend as necessary; however, the presence of the Financial Analyst will be required. Discussions should include but not be limited to:

(a) Adequacy of the contractor's accounting system for the segregation and accumulation of contract costs in a manner necessary to support requests for progress payments.

(b) Significance of the certification on SF 1443 or DD Form 1195, Contractor's Request for Progress Payments.

(c) Significance of the title provisions of the progress payment clause.

(d) Contractor's existing loan agreements and their provisions.

(e) Contractor's obligations to acknowledge the existence of Government inventory when obtaining a subsequent loan.

(f) Subordination agreements.

(2) A PAOC convened for other than the above reasons on a contract containing progress payment provisions will include in the agenda a discussion of the contractor's responsibilities under the progress payment clause.

c. *Contracts Containing Clauses for Maintenance of Industrial Mobilization Base.* All contracts containing clauses which restrict purchases in order to ensure continued existence of an industrial mobilization base for national defense, i.e., jewel bearings, miniature and instrument ball bearings, or precision components, will be specifically reviewed to determine postaward orientation requirements. If the determination is made that some form of orientation is required, the procedures in paragraph 42.5-4 above will be followed. However, if a contractor has a clear understanding of his obligations, postaward orientation action may not be necessary.

d. *Contracts for Overhaul, Maintenance and Repair of Supplies and Equipment.* Except as indicated below, a PAOC is required for all overhaul, maintenance and repair (OMR) contracts (see paragraph 90.03-3c.) However, in the event the OMR contract is either a repetitive acquisition or a purchase order and no administrative problems are anticipated, the PAOC may be waived by the CA Division Chief or his designee. The waiver shall be justified and documented on DLA Form 1533, Postaward Orientation Determination. If the OMR contract is a firm fixed price purchase order, for $10,000 or less, and does not contain a Government Property clause, a PAOC determination need not be made. The purchase order will be placed in CAR Part B.

e. *Contracts Awarded After a Negative Preaward Survey.* When the ACO is advised by the Production element that a contract was awarded despite a negative preaward survey, he should consider conducting at least a limited postaward conference. The agenda may be confined to a discussion of the preaward survey findings that might impact on the satisfactory completion of the contract.

f. *Contracts Awarded by the Small Business Administration* (SBA). Contracts awarded by the SBA under section 8(a) of the Small Business Act may be assigned to the cognizant DCAS office for normal administration. While the orientation conference conducted by the SBA (see paragraph 19-1) may, in many cases, eliminate the need for a normal postaward orientation conference, the requirements for review of each part A contract in compliance with this part remain. Any existing or potential problem areas may be identified during the SBA's orientation conference. If an orientation conference is not conducted by SBA or the procuring agency at the time of execution of the 8(a) subcontract, the ACO should consider conducting at least a limited PAOC with the subcontractor. In addition to the normal items on the agenda, the subcontractor's responsibility under the provisions of the Service Contract Act of 1965 will be specifically brought to his attention.

g. *Contracts for Medical Supplies.* DLAM 8200.2, Procurement Quality Assurance Support Manual for Defense Contract Administration Services, should be consulted to determine specialized postaward orientation requirements when medical supplies are involved.

h. *Major or Particularly Complex Subcontracts*

(1) The PAOC with a prime contractor in instances where major or complex subcontracts are involved, should include a discussion and understanding of prime contractor responsibilities and the precise extent of anticipated Government involvement at the subcontractor level. Details of discussion and understandings will be included in the summary report.

(2) While FAR 42.505 generally places the responsibility for conducting any necessary PAOCs with subcontractors on the prime contractor, ACOs should be aware that they may request the prime contractor to conduct a subcontractor conference if they believe the technical complexity of the subcontracts warrants such action. The ACO cognizant of the prime contract is usually responsible for initiating the request for a subcontract conference; however, the ACO cognizant of a major or particularly complex subcontract is not precluded from determining the need for a conference and requesting the prime ACO to take the necessary action.

(3) ACOs and CAS technical personnel administering the prime contract and the major or complex subcontract may be included as participants in subcontractor orientation conferences. However, Government representatives participating in such conferences must not overlook the caution in FAR 42.505(b) with respect to lack of privity of contract between the Government and subcontractor.

i. *Contracts Containing Unusual Provisions.* A PAOC should be considered for contracts containing the RIW, the NASA New Technology Clause or other unusual provisions, and procurements directed under the Defense Production Act of 1950.

j. *Contracts Containing C/SCSC Provisions.* A PAOC will be conducted on all contracts containing C/SCSC provisions (see paragraph 42.302-3).

k. *Contracts with Small Business/Minority Business Enterprises.* Postaward orientation will be conducted for all new small business/minority business contractors who have been awarded their first Government contract, regardless of dollar value. The ACO will receive a computer generated alert for Standard Coded Remark 45, Minority Business, as described in A-600.

l. *Contracts Requiring Exceptional Physical Security and Control.* A PAOC should be considered for contracts that provide for Government property which could be potentially dangerous to the public safety or security, e.g., arms, ammunitions and explosives (AA&E). If a PAOC is conducted, the Property Administrator as well as an Industrial Security representative will be invited to attend.

m. *Contracts Being Administered for non DoD Agencies.* The ACO should carefully review non-DoD contracts to assess the need for a PAOC. Some form of postaward orientation may be warranted to assure the contractor understands the provisions and requirements of non-DoD contracts.

n. *Contracts Containing a Duty-Free Entry Clause.* Some form of postaward orientation should be considered for contracts containing a duty-free entry clause. The duty-free entry clauses place specific requirements on the contractor to provide the ACO with *advance* notification when supplies have been ordered which are subject to duty-free entry.

o. *Contracts for Recovery of Precious Metals.* A PAOC will be conducted for all contracts, regardless of dollar value, which provide for recovery of precious metals from x-ray film ash, electronic scrap and other precious metals bearing surplus items. Discussions should include requirements for receipt, records, storage and movement, security and disposition of previous metals and related Government material.

p. *Contracts for Clothing and Textile Items.*

(1) The ACO will hold a Postward conference for all new C&T contractors and for all C&T contractors producing any given item for the first time. One-time, one contract deviations may be approved by the Region Commander only; this is an exception to the provision of paragraph 1.4-4b(1) of this manual.

(2) The subjects contained in DD Form 1484 will be covered with particular emphasis on specification and quality requirements, Government furnished material, the process for submission of claims, procedures for requesting deviations and waivers and on lessons learned in previous contracts for the same or like items.

(3) Where a Preward Survey reveals a potential for contractor financial, production or other difficulties, and where the award is based on a SBA Certificate of Competency, the ACO should consider holding a formal PAOC to familiarize the contractor with his resposibilities and obligations under the contract.

(4) In no instance will postaward conferences be delegated to the Directorate of Quality Assurance for handling. This does not preclude the Directorate of Quality Assurance from holding quality—only PAOC's in those instances where they are determined necessary and the ACO has determined that no overall PAOC is necessary.

(5) When the ACO determines that a postaward conference is required, it should also be determined whether representation from the Military Service which has responsibility for the specification for the item would be appropriate and helpful in conduct of the PAOC. If the contract

does not identify the cognizant Military Service, the Technical and Quality Assurance Division of DPSC, may be contacted for assistance, AUTOVON 444-3253—COMM (215) 952-3253 for Equipage and Footwear items and AUTOVON 444-3228—COMM (215) 952-3228 for Clothing and Textile items. A list of contact points for the Military Service follows: PAOCs will not be delayed to provide for Military Service representations unless it is determined absolutely essential to the success of the PAOC. Such delay should be approved by the Chief/Contract Management of the DCASMA.

Military Service Representatives:

1. U.S. Army, Natick Research and Development Center, AV 444-3871—COMM (215) 952-3871
2. U.S. Navy clothing and Textile Research Facility, AV 444-3801—COMM (215) 952-3801
3. U.S. Air Force Clothing and Textile Office, AV 444-3848—COMM (215) 952-3848
4. U.S. Coast Guard Liaison Office, AV 444-3021—COMM (215) 952-3021
5. U.S. Marine Corps Liaison Office, AV 444-3010—COMM (215) 952-3010

q. *Contracts Requiring Cost/Funds Status Reports.* The ACO should consider some form of postaward orientation for cost-type contracts requiring the contractor to provide periodic cost or funds status reports. The status of contract cost/funds is essential information which must be provided the PCO in a timely manner. ACOs should assure contractors understand the significance of such contractually required reports and when and where they should be submitted.

r. *Time and Materials and Labor Hour Contracts.* The ACO should strongly consider some form of PAOC for these contracts. These contracts do not encourage effective control of costs by the contractor, and thus require extensive surveillance procedures to be used should be discussed with the contractor. (See also Part 16.601.)

s. *Incentive and Redeterminable Contracts.* The ACO should consider some form of PAOC for these contracts in order to ensure that the contractor understands such reporting requirements as the Quarterly Limitation of Payments statement. (See also paragraph 16.4-3a.)

t. Contracts Containing a Preference for Privately Owned US Flag Commercial Vessels Clause. A PAOC should be considered for contracts containing a Preference for Privately Owned US Flag Commercial Vessels Clause. If a PAOC is conducted, Transportation personnel will be invited to participate.

u. AA&E and Classified contracts. All AA&E and classified contracts will be specifically reviewed to determine postaward orientation requirements. If the determination is made that some form of orientation is required, the procedures in paragraph 42.5-4 above will be followed. The ACO shall invite the cognizant DIS office to participate in all PAOCs for both AA&E and classified contracts, in addition to other functional specialists as the ACO deems necessary. A representative of the Specialized Safety Office shall be requested to participate in all PAOCs for AA&E contracts. If, however, a contractor has a clear understanding of his obligations, and has a good record of performance on previous similar contracts, postaward orientation action may not be necessary.

42.6 CORPORATE ADMINISTRATIVE CONTRACTING OFFICER (CACO)

42.6–1 References

a. FAR 42.6, Corporate Administrative Contracting Officer.

b. FAR 42.7, Indirect Cost Rates.

c. DFARS 42.6, Corporate Administrative Contracting Officer.

d. DFARS 42.7, Indirect Cost Rates.

e. DFARS 42.70 Monitoring Contractors Costs.

f. DoD 4105.59–H, Section III, Listing of CACOs.

42.6–2 General. CACO appointments are made in order to promote effective and consistent contract administration for contractors with multiple divisions, plant locations, and/or subsidiaries. The CACO is responsible for the review and approval of corporate-level policies and procedures affecting Government contracts placed with any of the contractor's operating elements. The CACO works in close coordination with Divisional ACOs (DACOs), Cost Monitoring Coordinators (CMCs), and Contract Audit Coordinators (CACs).

42.6–3 Criteria for Establishing CACO Positions

a. CACO assignment and location shall be established in accordance with the criteria set forth in the FAR 42.602 and DFARS 42.602(a).

b. CACO appointments may be made for contractors not meeting the residency requirement, provided that a waiver has been approved by the Executive Director of Contract Management (DLA–A) or his designee. The cognizant DCASR will prepare such waiver requests and forward them to HQ DLA (DLA–AC) for review and evaluation, and development of recommendations for the Executive Director. Waiver requests must include a sufficient showing that considerations of efficiency (e.g., the benefits that will accrue from appointment of a CACO) far outweigh strict adherence to the residency requirement.

c. In general, a CACO appointment is desirable whenever a corporate headquarters has retained most decision-making authority for itself, and/or issues polices and procedures and conducts negotiations impacting on Government contracts at the division level.

d. Corporate elements (e.g., divisions, groups, etc.) which appear to have a high degree of autonomous decision-making authority, and which have multiple plant locations of their own, may also be considered for appointment of a CACO. However, such appointments require the concurrence of HQ DLA (DLA–AC).

e. A file is to be established for each contractor considered for the appointment of a CACO. This file is to be available for submission to HQ DLA if requested. It must include reasonably complete information on the corporate organizational structure; and, for each lower-tier operating element, the file must also include:

(1) The total dollar value of commercial, DoD and non-DoD Governmental sales, respectively, on a per annum basis for the current and (on a projected basis) succeeding 3 years. The volume of corporate sales to the Government should exceed $50 million per annum, with one half or more of those sales accounted for by cost type contracts.

(2) Identification of the agency (DOE, Navy, DCAS, etc.) with contract administration cognizance over that location.

(3) By agency and by contract type (FFP, FPIF, CPFF, etc.) summary totals for value of the contracts and unliquidated obligations.

42.6–4 Appointment of CACOs and DACOs

a. CACOs: Only fully qualified individuals, by virtue of training, self-motivation and business acumen, should be selected and appointed as CACOs.

(1) All appointments of DCAS CACOs will be made in writing, signed by the DCASR Commander. Copies of all appointments (and any changes thereto) are to be provided to HQ DLA (DLA–AC and DLA–AO).

(2) If all operating and headquarters elements of the corporate contractor are located within the boundaries of a single DCASR, and no waiver of the residency requirement is needed (see 42.6–3b and d), the DCASR Commander may proceed immediately to select and appoint a CACO as soon as the decision has been made to include the contractor in the CACO program.

(3) If all elements of the contractor are under the cognizance of DCAS, but more than one DCASR is involved, the Region CACO Program Coordinator (see 42.6–9) in the DCASR desiring to make (or have made) a CACO appointment should contact the Coordinators in the other affected Regions. If the DCASRs involved agree on the decision to establish a CACO position and its location, the cognizant DCASR Commander may proceed immediately with selection and appointment. If disagreements arise, and the DCASRs involved cannot resolve their differences, the matter is to be submitted to HQ DLA (DLA–AC) for a final decision.

(4) If cognizance of the contractor's various elements is shared between DCAS and another agency(ies), the matter is to be submitted to HQ DLA (DLA–AC) for coordination with the agencies involved. If the decision is for DCAS to take the CACO

responsibility, DLA–AC will notify the cognizant DCASR Commander to take action to select and appoint the CACO.

b. DACOs: When a CACO has been appointed, and when specific benefits can be derived, ACOs cognizant of a contractor's lower-tier elements may be appointed as a DACO. (No other title or acronym is authorized, regardless of the title used by the corporation to describe its lower tier element.) The DACO is the CACO's counterpart at the divisional level, and will be responsible for such duties as are set forth in an agreement between the two contracting officers (see 42.6–6).

(1) When more than one ACO has been assigned to a contractor's facility, only one of those ACOs shall be appointed as the DACO.

(2) All DACO appointments will be made in writing, signed by the DCASR Director of Contract Management, or, where delegated, by the Chief of the Contract Management Division at the DACO's CAO.

42.6–5 CACO Duties and Responsibilities

a. The CACO's duties and responsibilities include, but are not necessarily limited to:

(1) Acting as the DoD liaison with corporate management.

(2) Developing uniformity and consistency in the treatment of costs throughout all of the contractor's Government-oriented operating elements.

(3) Evaluating and determining the acceptability of the contractor's management and operating policies and systems have corporate-wide impact, such as:

(a) Accounting systems (see 16.104).

(b) Cost Accounting Standards matters (see 30).

(c) Cost Proposal Policies and Procedures.

(d) Pricing and Estimating Policies and Procedures (see 15.811).

(e) Purchasing and Systems (see 44.3).

(f) Employee compensation policies and systems (see 31.205 and 22.103).

(g) Insurance/Pension Programs (see 28.3).

(h) Travel, per diem, and relocation expense policies.

(i) Lease-Versus-Buy Policies and Procedures.

(j) Property Management and Disposal Policy (see 45.4 and 45.5).

(k) Patents and Royalties Policies (see 27.1).

(l) Termination Policy.

(m) Advance understandings on particular cost items.

(4) Negotiating Forward Pricing Rate Agreements (FPRAs) or making Forward Pricing Rate Recommendations (FPRRs) (see 15.809).

(5) Negotiating final indirect cost rates and billing rates (see 42.7).

(6) Negotiating advance agreements for IR&D and B&P costs when the responsibility of being the Tri-Service Departmental negotiator has been assigned to the CACO, or when so delegated by the Tri-Service negotiator (see 31.109).

(7) Providing information and assistance to DACOs, CMCs (see 42.7), and CACs, and maintaining close liaison and coordination with those individuals regarding the contractor's general management policies and procedures, and accounting and financial information.

(8) Issue Notices of Intent to Disallow or Not Recognize Cost for corporate expenses within the CACO's settlement authority and, approve Notices of Intent to Disallow or Not Recognize Costs, as appropriate, when such notices are issued by DACOs/ACOs and the CACO has final overhead settlement authority for the affected division.

b. These duties and responsibilities are to take precedence over any other non-CACO-related duties that may have been assigned to the individual serving as a CACO. To the extent possible, the CACO should be released from such other duties and responsibilities, or a reduction should be made in their volume, in order to preclude interference with fulfillment of the duties and responsibilities of the CACO position.

c. These duties and responsibilities may be apportioned between the CACO and any of the DACOs assigned in accordance with the agreements reached between those contracting officers (see 42.6–6).

d. In fulfilling these duties and responsibilities, the CACO shall make full use of the available Defense Contract Audit Agency (DCAA) advisory services.

e. In matters related to Equal Employment Opportunity, the Corporate Equal Opportunity Specialist (CEOS) will serve as the liaison with corporate management on all matters associated with the development and implementaion of a Corporate Contracts Compliance program. The CACO is to advise the cognizant CEOSs of the CACO's assignment to the corporation, and is to ensure coordination with the CEOS on the resolution of problems, whenever applicable.

f. The CACO will receive from the DACO cognizant of a divisional segment the information specified at Part 90.14-1(d) of this manual when a corporate segment is entered into the Contractor Improvement Program.

42.6-6 CACO/DACO Agreements

a. Agreements between the CACO and DACOs are to be prepared for each contractor in the program. These agreements are intended to preclude duplication of effort and/or confusion regarding who is responsible for specific functions.

b. Responsibilities should be divided between the CACO and the DACOs according to the delegation of decision-making authority made by corporate management. For example, when authority to negotiate overhead expenses is centralized at corporate headquarters, the CACO will negotiate on behalf of all the DACOs. Conversely, when that authority has been delegated to the contractor's divisions, the DACOs will negotiate the overhead expenses for their respective divisions.

c. The agreements should be executed no later than 90 days after the CACO (original or replacement) has been appointed. The CACO will provide a copy of each of the agreements with the DACOs to the Region CACO Program Coordinator (see 42.6-9). (DACOs who are not located in the same Region as the CACO will provide a copy of their agreements to their respective Program Coordinators.)

d. In those cases where DCAS and some other agency(ies) (e.g., the Military Departments, DOE, etc.) have contract administration cognizance over different operating elements of the same corporate contractor, the DCAS CACO or DACO is to take the lead in proposing and finalizing an agreement with the CACO, DACOs or cognizant ACOs of the other agency(ies) involved. Should any difficulties arise in establishing such agreements, and the cognizant DCASR cannot resolve the problem, the matter is to be submitted to HQ DLA (DLA-AC) for review and assistance.

e. A sample agreement can be found in paragraph 42.6-7. The format and prescribed content are not mandatory, and may be changed as necessary to fully describe the agreements reached between the CACO and DACO, particularly when CACOs or DACOs of other agencies are involved.

42.6-7 Sample Format for CACO/DACO Agreement

SUBJECT: Memorandum of Agreement, Corporate ACO Program, (name of corporation)

1. Whereas, (name of corporation), has been selected to participate in the Corporate ACO Program (as defined in FAR 42.6).

2. Whereas, (name of CACO), Administrative Contracting Officer at (name of CAO) has been designated to assume the functions of Corporate ACO.

3. Whereas, it is necessary to differentiate between the functions and authority of the designated Corporate ACO and the functions and authority of the Divisional ACO at (name of corporate division, name of DACO's CAO).

4. Know therefore, that the parties hereto agree that the division of contract administration functions between the Corporate ACO and the Divisional ACO shall be as follows:

Function *Responsible Agent*

a. Negotiation of forward pricing and billing rates.
b. Executive compensation, pension, bonus or incentive programs.
c. Compensation reviews.
  (1) Divisional Payroll.
  (2) Corporate Payroll.
d. Overtime.
e. Contractor Insurance/Pension Program.
f. Leasing policies.
g. Relocation Expense Policy.
h. Negotiation of Advance Agreements for Independent Research and Development, and Bid and Proposal costs.
i. Negotiation of Final Overhead Rates and G&A.
  (1) Corporate
  (2) Divisional
j. Accounting system acceptance
k. Purchasing system approval.
l. Property management and disposal policy.
m. Termination policy.
n. Patents and Royalty policy.
o. Negotiation of Advance Understanding on Particular Cost Items.
p. Industrial Security Responsibilities.
q. Small Business Responsibilites.
r. Cost Accounting Standards matters.

5. The parties further agree that with regard to any of the functions and responsibilities delegated herein to the Divisional ACO, for any issue or decision confronting the Divisional ACO that may then or subsequently have a corporate-wide impact or affect more than one division, the matter will be coordinated with and/or referred to the Corporate ACO for approval before the Divisional ACO shall make a commitment to the contractor.

6. It is recognized that the conditions existing this date, resulting, in the above division of responsibilities, may change. It is agreed that significant changes in such conditions shall be cause for revision of this agreement.

Signed and confirmed this—day of (month), (year).

DACO

CACO

42.6-8 CACO Travel and Attendance at Meetings

a. CACO/DACO Meetings: As and when practicable, CACOs should arrange for and conduct CACO/DACO meetings to discuss and resolve contract administration matters having interdivisional implications. These meetings should include all the DACOs assigned, except for those specific cases where an individual DACO(s) will clearly not be involved with the issues scheduled for discussion.

(1) The invitations to attend the meeting are to include a preliminary agenda of issues scheduled for discussion, and are to be forwarded sufficiently in advance to allow each person invited to make arrangements to attend. Besides DACOs, the invitations should also be extended to CACs, CMCs, CAO Management Personnel, PCOs and Contract Auditors.

(2) Minutes of the meetings will be distributed to *all* DACOs and all others invited regardless of whether they actually attended or not.

(3) The DCASR sponsoring the meeting should resolve with the other field activity(ies) involved the problem that an invited DACO may not be able to attend the meeting. If the problem cannot be resolved, the matter may be submitted to HQ DLA (DLA-AC) for review and assistance. Generally, every effort should be made to ensure attendance by all DACOs invited.

b. CAC Meetings: When invited, CACOs should make every effort to attend CAC meetings, and should disseminate the results of those conferences to the DACOs.

c. CACO travel in the performance of assigned duties will be accomplished, as deemed necessary and practicable, for attendance at CACO/DACO meetings, CAC meetings, and for visits to individual DACOs.

42.6-9 Region CACO Program Coordinators. The Director, Contract Management of each DCASR will designate an individual to coordinate the CACO Program at the Region level. The duties and responsibilities of that Program Coordinator include:

a. Reviewing and evaluating the effectiveness of the CACO Program within the DCASR, and advising the DCASR Director of Contract Management of program status.

b. Reviewing and maintaining copies of all CACO/DACO agreements (and subsequent revisions thereto) affecting personnel within the DCASR.

c. Maintaining coordination with the CACO Program Coordinator at HQ DLA (DLA-AC), and disseminating information relative to significant problems of a general nature and their resolution to HQ DLA (DLA-AC) and to other Region Coordinators, as warranted.

d. Recommending to the DCASR Director of Contract Management when CACO assignments should be initiated or terminated.

42.6-10 CACO Activity Reports (RCS DLA(Q) 1691(A)). All CACOs will prepare quarterly reports on their activities. These reports are to cover the periods of 1 Jan to 30 Mar, 1 Apr to 30 Jun, 1 Jul to 30 Sep, and 1 Oct to 31 Dec of each year.

a. The reports for the period ending 31 Dec are to include the information from both Sections I and II of the format below in 42.6-11. The reports for all other periods are to include only the information from Section II.

b. The reports are to be forwarded to the DCASR CACO Program Coordinator by the 15th working day of the month following the end of the report period. Within 10 working days thereafter, the Program Coordinator is to review, analyze, consolidate and forward copies of all that Region's CACO Activity Reports to HQ DLA (DLA-AC). For the report period ending 31 Dec, the Program Coordinator is to include the following information in the transmittal letter:

(1) A statement that the CACO/DACO agreements have been reviewed and are current, complete and accurate.

(2) A brief listing of contractors screened as potential candidates for the CACO Program, and their eligibility status (tentative or final). If no contractors are, or have been screened for potential eligibility, state "None."

(3) Problems encountered by the Program Coordinator in administering the program.

(4) Recommended changes to the program. (If none, so state.)

42.6-11 CACO Activity Report Format

a. Section I—General Information (for the 31 Dec report only).

(1) Name and address of the contractor.

(2) Name, address and telephone number of the CACO.

(3) Name and address of each corporate divisions to which a DACO is assigned, and the name and address of the DACO(s).

(4) Any actual or proposed changes in the corporate organization arising within the last year.

(5) Government and commercial sales by division for the company's latest fiscal year.

(6) Percent of time expended by the assigned CACO in purely CACO-related duties.

b. Section II—Program Status (for all report submissions). Provide a narrative account of the specific activities undertaken during the reporting period. Particularly address the status and planned actions for such issues as:

(1) Any pending overhead settlement negotiations.

(2) Unresolved contract audit reports over six months old. (Explain the extenuating circumstances which precluded timely resolution.) (See 90.01).

(3) Overaged Contract Audit Reports. (Provide rationale for overaged status.)

(4) Any Cost Accounting Standards issues.

(5) Any pending or on-going litigation to which the CACO is or may become a party.

(6) CACO/DACO meetings; or, where no meetings have been held during the reporting period, the nature and extent of CACO/DACO coordination.

(7) CACO/CAC coordination.

42.7 ESTABLISHING OVERHEAD RATES

42.7-1 References

a. FAR 42.7, Establishing Overhead Rates.

b. FAR 31, Contract Cost Principles and Procedures.

c. DFARS 42.70, Monitoring Contractors' Costs.

d. DFARS, Manual for Contract Price (as PM No. 1).

e. DAR Section III, Part 7, Establishing Overhead Rates.

f. DAR Section XV, Contract Cost Principles and Procedures.

g. DAR Section XX, Part 10, Monitoring Contractors' Costs.

h. ASPM No. 1, Armed Services Pricing Manual, Part 9, Postaward Pricing Actions.

i. DLAH 8115.1, Guide for Monitoring Contractors' Indirect Costs.

j. DODI 4245.5, Indirect Cost Monitoring Office.

42.7-2 Scope

Overhead management is an integrated process consisting of FPRA or FPRR establishment (see 15.809), cost tracking during periods of cost incurrence, billing rate determination and final rate settlement. It is DoD policy to stress contractor cost avoidance in performing these activities. To accomplish the DoD cost avoidance objective, ACOs and Government pricing team members involved in the final settlement process must be thoroughly familiar with actions taken and documentation developed in forward pricing and cost monitoring activities. This will assure that advance agreements reached with the contractor as well as cost avoidance notices issued by the contracting officer are reflected in the final overhead settlement. It will also permit a comparison between contractor forward pricing assumptions and actual experience reflected in the overhead claim. Government team members should assure any major deficiencies highlighted in this comparative analysis are brought to the attention of the contracting officer. The contracting officer should use information developed in the comparative analysis to improve the contractor's forward pricing submissions for future years.

42.7-3 General

a. The ACO is responsible for determining that contractor overhead costs allocated to Government contracts are reasonable (see FAR 42.302). While most of the functions assigned to the ACO have an impact on a contractor's overhead costs, those with the most immediate and direct effect are:

(1) Reviewing, evaluating, and negotiating contractor proposals (Part 15.805).

(2) Monitoring contractors' costs (Part 42.70).

(3) Negotiating advance understandings/agreements, and FPRAs Parts 31.109 and 15.809).

(4) Reviewing contractor management systems (Parts 15.811, 28.30, 31.205 and 44.3.)

(5) Establishing billing rates (paragraph 42.7-4 below).

(6) Issuing Notices of Intent to disallow or not recognize costs (Part 42.80).

(7) Reviewing and disallowing incurred costs (Part 31.2).

(8) Settling final overhead rates under cost-type contracts (paragraph 42.7-5).

b. However, there are some exceptions when rates are determined by other Government personnel. These exceptions include establishing advance agreements for independent research and development and bid and proposal (IR&D & B&P) expense with a select group of contractors (paragraph 42.5 and Part 31.109) and the determination of final overhead rates for another group of contractors by the contract auditor (paragraph 42.7-9 below). Notwithstanding these exceptions related to overhead and IR&D & B&P agreements, the ACO has continuing responsibility for the performance of the other functions enumerated in subparagraph a above.

42.7-4 Establishing Billing Rates

a. When the ACO has final overhead determination authority, billing rates will be established by agreement between the ACO and the contractor so that the contractor can be reimbursed for contract costs prior to settlement of final overhead rates. (See FAR 42.704)

b. If billing rates are included in the contract schedule, the contract must be amended to reflect revision of the original rates. If the PCO has not delegated the ACO authority to establish predetermined rates by contract amendment, the PCO will be requested to delegate this responsibility in accordance with FAR 42.302(9). When delegated this responsibility, the ACO will follow the procedures in Part 43.

42.7-5 Cost Reimbursement Contracts. Upon completion of a contractor's fiscal year, the actual overhead expenses incurred and the bases used for allocating these expenses to Government and commercial business are subjected to audit and final rate determination. Final overhead rates are used to adjust billing rates to reflect the amount the contractor will be reimbursed for overhead expenses for the past fiscal year. Additionally, final overhead rates normally are used as the basis for the negotiation of other pricing actions for the same time period, such as termination settlements and final pricing of incentive contracts. FAR 42.705 provides the criteria for contracting officer or audit determined final overhead rates. The following supplements these requirements:

a. When settlement authority is decentralized to the DACO or cognizant ACO, individual ACOs are responsible for coordinating with the CACO to assure consistency of cost determinations. The assignment of overhead settlement responsibility among CACOs, DACOs, and cognizant ACOs should be defined in CACO/DACO agreements. Where joint agreement cannot be reached regarding the assignment of settlement responsibilities, the matter will be referred through channels to HQ DLA (DLA-AF).

b. The CACO, DACO, or ACO responsible for final overhead determination should immediately notify the RCMS in writing of changes in negotiation cognizance caused by newly acquired or recently transferred contractors or reorganizations, mergers and consolidations. (See 42.7-14a(1)). The RCMS will furnish HQ DLA (DLA-AF) with a quarterly report of all negotiations cognizance changes (see 42.7-14a(1)), which will be used to update the Master List.

c. Final overhead rates are established by the method of audit determination at all locations not designated for CO determination. If the ACO encounters a situation where the contractor's civilian agency contracts incorporate the Negotiated Overhead Rates Clause, but the contractor does not meet the DoD criteria for CO determination of overhead rates the ACO will submit the audit report which details the audit findings (see FAR 42.705-2 and FAR 42.706) to the civilian agency contracting officer for contract close-out when this function has been retained by the PCO.

42.7-6 Establishing Rates by CO Determination. FAR 42.705-(b) provides procedures and sequence of events in the CO determination process. The ACO is responsible for submitting Reports on Status of Open Overhead Negotiations on a semiannual basis (see 42.7-14b(1)) and a Report of Completed Overhead Negotiation (see 42.7-14b(2)), when a particular overhead agreement has been negotiated and all the steps required by FAR 42.705-1(b) completed.

a. *Notification to Contractor.* Sixty days prior to the end of the contractor's fiscal year, the ACO will request that the contractor submit the final overhead rate proposal within 90 days after the end of its fiscal year end. The contractor also shall be requested to submit three copies of the proposal to the ACO, and one copy to the contract auditor. The ACO will furnish a copy of the notification to the price/cost analyst, or cost monitoring specialist (CMS) if a cost monitoring program (CMP) is underway at the location (part 42.70), the contract auditor and the regional cost monitoring specialist (RCMS). When the size and complexity of the overhead action warrants it, the ACO should hold a coordination meeting with the contractor and representatives from the functional elements responsible for evaluating the overhead proposal. This meeting should be held as soon as possible after the close of the contractor's fiscal year to ensure that the contractor understands how the data should be submitted.

b. *Contractor's Overhead Proposal.* Upon receipt of the contractor's proposal, the ACO will:

(1) Request the Financial Services element to perform a review and evaluation of the overhead proposal. The assigned CMS or price/cost analyst will transmit copies of the contractor's overhead rate proposal to other functional representatives and the contract auditor (provided the contractor did not submit one directly to the contract auditor), together with a request for an evaluation and target dates for submission of inputs in accordance with the procedures contained in part 15.805. A copy of the proposal and the request will also be forwarded to the RCMS for information.

(2) Meet with representatives from all functional elements who will participate in the review to identify any special coverage which may be required in the course of the analysis. During this meeting, the ACO, based on a preliminary review of the contractor's proposal, may adjust the target date for issuance of the review and evaluation report which in turn impacts on the date for submission of the overhead advisory audit report. Whenever possible, the target date for submission of the audit report will be no more than 90 days after receipt of the contractor's proposal. Establishment of the audit report completion date should consider and, if necessary, make allowances for other work of the contract auditor. The overhead analysis report, with audit and technical input attached, will recommend to the ACO the proposed negotiation position including specific costs which should be accepted or questioned. The report will include a recommended negotiation dollar range for costs questioned. When necessary, the report will identify cost items which should be submitted to the contractor for further clarification. This will enable the contractor to prepare necessary data for the negotiation conference and will lessen the possibility of having the overhead negotiation conference delayed or postponed. The ACO shall withhold from the contractor any information/data which may compromise the Government's position.

c. *Prenegotiation Conference.* Prior to the initiation of negotiations with the contractor, the ACO will present his prenegotiation position to the RCMS for comment. The primary purposes of this review are to assure that the most current DoD cost policy is reflected in the negotiation position, and to maintain uniformity and consistency in the treatment of costs between and among major DoD contractors. Additionally, when the negotiating ACO is part of a CACO complex, and negotiations are to be conducted on a coordinated basis, the DACO or cognizant ACO will forward his prenegotiation position to the CACO for review and comment as appropriate. This review process will also assist in maintaining uniformity and consistency on common items of cost on a corporate-wide basis. Subsequently, the ACO will arrange for a prenegotiation conference of representatives of all Government agencies who may be interested in the negotiated rates. During the prenegotiation conference any differences between the Government representatives can be resolved and uniformity in the treatment of cost assured. Invitations to attend the prenegotiation meeting and negotiations should be extended to those DoD and other Government buying offices having a significant dollar interest, the RCMS, other technical specialists and the auditor. The invitation will include a summary of the purpose of the negotiation; a brief synopsis of the significant cost exceptions taken to the overhead proposal; the dollar value and percentage of Government business for the Military Departments and/or agencies; a statement that further details will be furnished upon request; and any other data considered appropriate. Addressees will not be requested to respond unless they plan to attend. The invitation will be marked "For Official Use Only." Distribution of the advisory overhead audit report normally will have been made by the contract auditor prior to receipt of the ACO's invitation. The ACO should make arrangements with the contract auditor for additional distribution of audit reports to Military Departments/agencies not on normal distribution. The prenegotiation conference should be scheduled for at least 30 days from the date the invitations are mailed.

d. *Negotiation Conference.* The formal negotiation sessions with the contractor normally will occur immediately after the prenegotiation conference of Government representatives. Both conferences will be under the direction of the ACO, and should be completed within a minimal time period to ensure continuity and eliminate the necessity for additional travel by the attendees. Military Departments/agencies which do not have representatives at the negotiations will be represented by the ACO, and the results of the negotiations will be binding on all DoD Departments. When non-DoD agencies are involved, they should be encouraged to attend and asked if they will be bound by the results of the negotiations since concurrence with the ACO's negotiation position is tantamount to their agency's acceptance of the rates determined.

e. *ACO Decisions that Override Recommendations from Team Members.* Since the results of the negotiations will be binding on all participants, the ACO must make every effort to ensure, to the greatest extent practicable, that the results of the negotiations consider the best judgment of all of the Government representatives involved. The ACO will carefully evaluate the advice and recommendations offered by the negotiation participants, but only the ACO is responsible for reaching a fair and equitable judgment and rendering a decision legally binding on the Government.

(1) ACOs should not be reluctant to override, where warranted, the recommendations of their team members. Such situations occur where policy guidance, of necessity, is not finite, and the most equitable resolutions are based on the ACO's business judgment. The ACO should not abdicate any responsibilities or prerogatives in developing the Government's final position. When the ACO exercises the right to make decisions which may be at variance with recommendations received, this should be fully documented.

(2) When the ACO is faced with a major cost allowance question which may be precedent-setting, the path of least resistance might be to accept the recommendation of a team member. This may cause the contractor unwarranted time and expense of appealing the ACO's decision to the ASBCA. The preferred handling, however, is for the ACO to make a proper decision at this juncture, thereby establishing the fact that the ACO has the authority and will exercise it. In the final analysis, the decision must be the ACO's. If the ACO needs information regarding Defense policy on the issue, the matter should be referred formally or informally to the RCMS. If necessary, the RCMS will forward the matter through command channels to HQ DLA (DLA-AF). The RCMS has a vital role in this process and should submit controversial cost issues to DLA-AF through the Regional Financial Services Division for DLA guidance. The cost issue requiring policy guidance should contain the following information:

(a) The total cost in question by year.

(b) The pools or bases in which the questioned item is recorded.

(c) The percentage of the cost allocated to Government contracts and Government costs-type contracts by year.

(d) A description of the issue including the ACO's position, the contractor's position, and appropriate FAR and DFARS references.

(e) The RCMS's indepth analysis of the issue.

f. *Resolution of Military Department and/or Agency*

Differences. Results of the negotiations will be binding for all Military Department contracts. Therefore, the ACO should give consideration to the recommendations from these representatives. If Departmental or Agency differences arise which cannot be resolved during the prenegotiation or the negotiation conferences, the differences should be referred to the DCASR Director of Contract Management for resolution. If the Director cannot resolve the matter, it should be referred to HQ DLA (DLA-A), for appropriate action. In making such referrals, sufficient time should be provided for resolution of the differences before scheduling a continuation of negotiations. (See 90.01 for audit follow-up requirements relating to final overhead settlements.)

42.7-7 Documenting ACO Determined Final Overhead Rates.

a. Upon completion of negotiations, the ACO will prepare a Negotiation Memorandum (see FAR 15-808) and a written Overhead Rate Agreement as required by FAR 42.705-1(b). All copies of both documents shall be marked "For Official Use Only" and shall become part of the official contract file. The ACO will submit the Negotiation Memorandum and the proposed Overhead Rate Agreement for Board of Review action in accordance with Part 90.16 prior to making distribution.

b. The Negotiation Memorandum shall contain the following information, in addition to that required by FAR 42.705-1(b).

(1) The names, positions, and organizations of conferees representing the Government and the contractor.

(2) Date or dates of negotiations.

(3) The purpose of the negotiations.

(4) A summary-type recapitulation of the contractor's proposal, the negotiation objectives and the rationale supporting the negotiated rates. The recapitulation will be organized by burden pool and type of expense and will contain a summary of the negotiations in terms of dollars (bases and expense pools) and percentages of the bases.

(5) A listing of the affected contracts, or reference to a document (such as the audit report) that contains such a list. Contracts containing special provisions, sharing arrangements or advance agreements shall be identified and described, and special rate adjustments indicated.

(6) Explanation of any unique organizational arrangements the contractor may have which affect the uniformity of application of either the expenses or the treatment of the bases for establishing the negotiated rates.

c. The Overhead Rate Agreement, prepared by the ACO in accordance with FAR 42.705-1(b), will include:

(1) The negotiated overhead rates.

(2) The bases to which the rates apply.

(3) The periods to which the rates apply.

(4) A list of affected contracts and identification of advance agreements or special provisions and the rates applicable thereto.

d. After completion of the Board of Review action, the ACO and contractor will execute the Overhead Rate Agreement. Upon execution, the agreement will be automatically incorporated into contracts in accordance with the "allowable cost, fee and payment" clause or the "negotiated overhead rates (1970 Sep)" clause, as appropriate. For contracts containing an older clause requiring incorporation of negotiated overhead rates by modification (SF 30) Amendment of Solicitation/Modification of Contract, the Overhead Rate Agreement will be the basis for modification of the affected contracts. In all cases, any revision to billing rates provided for in the contract schedule shall be incorporated by contract modification (SF 30) to the applicable contracts. Procedures to accomplish such modifications are detailed in Part 42.

e. In those cases where a CACO has been assigned to the corporate contractor, the ACO (or DACO) will often be responsible for negotiating only those rates applicable to the division (or product group, plant location, etc.) to which the ACO has been assigned. (See also 42.6.) Until the CACO has completed negotiations and finalized the corporate overhead rates and expense allocations, it will not be possible to incorporate any final overhead rates into the affected contracts; but, the ACO should nevertheless proceed to negotiate and reach agreement on the divisional rates under his cognizance. This will ensure that there are no undue or unnecessary delays in closing out contracts once the corporate negotiations have been completed. Such "interim" divisional rate agreements should be submitted to the Contract Management Board of Review in accordance with subparagraph a. above and 90.16-6f(10).

42.7-8 Distribution Requirements. Preparation and distribution of the Overhead Rate Agreement and the Negotiation Memorandum shall be completed as soon as possible, and not later than 60 days after completion of negotiations. Distribution requirement for the agreement and memorandum are in DFARS 42.706. In addition, one copy of Overhead Rate Agreement will be forwarded to the activities listed below and to other Government agencies having a significant volume of contracts at the location.

ACTIVITY

Commanding General
U.S. Army Materiel Command
ATTN: DRCPP-SC
5001 Eisenhower Avenue
Alexandria, Virginia 22333

Department of the Navy
Office of the Assistant Secretary
(Shipbuilding and Logistics)
ATTN: CBM-CP
Washington, DC 20360-5000

Commander
Air Force Systems Command
ATTN: PPMO
Andrews Air Force Base, MD 20331

NASA Headquarters
ATTN: Code HC
Washington, D.C. 20546

Region Manager
Cognizant DCAA Regional Office

42.7-9 Settlement of Final Overhead Rates by Audit Determination

a. All locations not qualifying for settlement of final overhead rates by the procurement determination technique have rates settled by Audit Determination (see FAR 42.705-2(b) and FAR 42.706.

b. In the event an agreement is not reached between the auditor and contractor, the auditor will issue a complete advisory audit report and a DCAA Form 1 (Notice of Costs Suspended and/or Disapproved) detailing the items of exception to which the contractor can formally appeal to the cognizant ACO. When the contractor appeals an audit disallowance action in writing, the ACO must make a final determination as to the allowability of cost. Procedures to be followed by the ACO in processing such appeals are contained in Parts 33 and 31.2.

42.7-10 Negotiations Conducted by the CACO or a Tri-Service Central Office Representative

a. Although the ACO has overall responsibility for administering assigned contracts, the CACO may have been designated to establish final overhead rates, or a Tri-Service Representative may have been designated to accomplish advance IR&D and B&P agreement negotiations. In such cases, the ACO shall, to the extent requested by the sponsor, support the sponsoring CACO or Tri-Service representative in accomplishing proposal evaluations and negotiations.

b. Since the sponsoring departments' procedures may differ in the extent of support desired, the ACO should coordinate with the sponsor on a case-by-case basis to establish the extent of required ACO participation. In some cases the sponsoring department may request complete support, including obtaining and analyzing the contractor's proposal and developing detailed recommendations as to its reasonableness. In other cases, the sponsor may not desire any DCAS office participation, and may prefer to deal directly and exclusively with the contractor in obtaining and evaluating the proposal. In any event, there should be a clear understanding between the ACO and sponsoring department as to the DCAS office's role in accomplishing these functions. The understanding reached should be fully documented and coordinated with the sponsoring Military Department. In cases where a DCAS office is assigned CACO responsibility, the CACO is responsible for coordinating with the sponsor relative to the extent of DCAS support on a corporate-wide basis.

c. The HQ DLA Special Assistant for Contractor Cost Monitoring (DLA-AF), upon receipt of an invitation from another sponsoring Military Department for DLA to participate in IR&D and B&P negotiations or complex overhead rate negotiations, will transmit the invitation to the Director of Contract Administration at the cognizant DCASR. Normally, the ACO will participate in the negotiation. If the ACO is not available, the CMC (if a cost monitoring program has been established), or the price/cost analyst will normally participate in the negotiation. If a CACO has been assigned, the CACO will attend in lieu of the individual divisional ACO. Since participation in all such negotiations is normally limited to the one DCASR representative who is most familiar with the contractor's overall operations, this representative should reflect the positions of all DCAS personnel who deal with that contractor on a day-to-day basis.

42.7-11 Quick Closeout Procedure

a. Of necessity, the closing of physically completed cost-type contracts may be delayed pending annual establishment of final overhead rates. When it is apparent that contract closeout will be delayed for that reason, the ACO will determine the approximate total of indirect costs allocated to affected contracts. If the approximate total of such indirect costs does not appear to have a significant impact on the annual settlement of final overhead rates, and does not exceed 15 percent of the total indirect costs allocable to cost-type contracts for the contractor's fiscal year, the ACO and the contractor may agree upon an allocable amount of final overhead costs to be used for contract closeout purposes. This procedure should be limited to contracts with small dollar balances or to instances where indirect costs applicable to any one DoD contract in one fiscal year do not exceed $500,000 ($200,000 under NASA contracts).

b. All actions to establish allocable overhead costs for more timely closeout purposes should be supported by advisory audit reports commensurate in depth with the total of indirect costs involved. Where the ACO determines that the total of indirect costs is so small that the cost of auditing is not justified, the contracts may be closed by using rates established for the preceding fiscal year, or recommended by the price/cost analyst.

c. If use of the procedures outlined in subparagraphs a and b above, will result in inequitable settlements, contract closeout must be deferred until annual overhead rates are established.

d. In using these closeout procedures, the ACO should ensure that the contractor understands that the allocable overhead costs utilized for closeout purposes are final, are not precedent-setting, and are not subject to adjustment at the time of annual rate determination. Actions taken in accordance with this paragraph will be documented by the ACO and set forth in a contractually binding bilateral agreement which will provide for reimbursement of agreed upon overhead costs under the affected contracts. While these agreements are not required to be submitted to the Board of Review, the DCASR Director, Contract Management may require that they be reviewed by the Board.

42.7-12 Overhead Analysis

a. The price/cost analyst, or CMS (at sites where cost monitoring programs are established) has primary responsibility for supporting the ACO in the review and evaluation of contractor overhead rate proposals. In accomplishing this function, the price/cost analyst, or CMS will:

(1) Analyze contractor forward pricing proposals, utilizing modern and sophisticated techniques such as regression and correlation analysis, and parametric analysis to the extent considered necessary and practical.

(2) Analyze contractor proposals for advance agreements for IR&D, B&P, and any other specific elements of the contractors' overhead rate structures.

(3) Implement cost monitoring programs with selected contractors (see part 42.70).

(4) Review (in conjunction with the contract auditor) contractors' policies, procedures and practices for effectively managing and controlling contract costs.

(5) Establish the program for analysis of contractor overhead rate proposals (including technical and audit participation) and the identification of areas of overhead which should be subjected to detailed review by the contract auditor and by other technical specialists.

(6) Correlate the results of individual price proposal evaluations and contract management systems reviews into the analysis of overhead proposals, using reports and resources available in the Financial Services element.

(7) Assist in the development of negotiation objectives and participate in negotiation meetings as requested by the ACO. All of the above functions will be accomplished so as to avoid duplication or overlap of effort, to the extent practicable between DCAS and DCAA technicians.

b. *Duties of the Region Cost Monitoring Specialist* (RCMS). To ensure uniformity, consistency, and thoroughness in cost-related reviews and evaluation of overhead rate proposals or proposals for advance agreement on specific items of cost, each DCASR shall maintain a specialized capability to assist the assigned ACO, CMS and/or Price/Cost Analyst. This person will be identified as the Region Cost Monitoring Specialist (RCMS). The RCMS will:

(1) Act as the principal advisor to the Regional Chief, Financial Services Division, in policy matters involving contractor direct and indirect costs.

(2) Provide guidance, assistance and coordination with the DCASR Office of Counsel and DCAA concerning cost avoidance notices (see part 42.801) and policy issues which may result in contract dispute actions.

(3) Maintain liaison with the HQ DLA Special Assistant for Contractor Cost Monitoring (DLA-AF) to assure that latest DoD cost policy is reflected in agreements or settlements negotiated by ACOs.

(4) Maintain liaison with the DCASR Systems and Engineering focal point for cost monitoring, the Regional Energy Management Coordinator, and other functional elements to assure coordination of actions which can affect contractor costs.

(5) Maintain close contact with other RCMSs to assure uniformity and consistency between DCASRs concerning major DoD cost policy issues.

(6) Establish and maintain a data bank concerning the contract cost principles, which will include significant ASBCA cases, precedent actions taken by ACOs, and other background data for use in the analysis and negotiation of contractor costs. Data provided by the Indirect Cost Monitoring Office (ICMO) will be maintained in the Regional Financial Services Data Bank (see paragraph 42.7-14a.) CMSs, Systems Analysts, Price Analysts, and ACOs will be advised of the data bank and provided information as needed.

(7) Assist the ICMO as necessary in specialized research relating to complex cost issues and problems when requested by HQ DLA (DLA-AF).

(8) Provide data of the nature described in subparagraph (6) above which may have been developed locally to HQ DLA (DLA-AF) for inclusion in the DCAS-wide data bank and other data banks which may be maintained by the ICMO or other Military Departments.

(9) Review prospective negotiation positions for, but not limited to, advance agreements on specific items of cost expected to have a significant impact on Government contract costs, mandatory agreements for IR&D/B&P expenses (see part 31-109), forward

pricing rate agreements (see Part 15.809), final overhead rate settlements (see paragraph 42.7-6), ACO settlements of significant DCAA Forms 1 (see Part 31.2), and ACO resolutions of appealed Notices of Intent to Disallow or Not Recognize Costs (see part 42.801).

(10) Assist DCASR Boards of Review (see Part 90.16) to the extent practicable as they review actions of the nature discussed in subparagraph (9) above.

(11) Ensure timely and accurate submission of the reports required by the ICMO. (See Parts 42.7-14a(1), Master List Quarterly Reports; 42.7-14a(2), Master List Biennial Reports; 42.7-14b(1), Report on Status of Open Overhead Negotiations; 42.7-14b(2), Report of Completed Overhead Negotiation; and 31.109-4f(12), Report of Completed IR&D/B&P Advance Agreements.)

42.7-13 Coordination and/or Assistance Available from HQ DLA

a. The ACO and supervisory personnel should exhaust all remedies to minimize the necessity of escalating overhead problems to HQ DLA. When audit effort is involved, maximum cooperation and liaison between DCAA field offices and their respective regional offices should be utilized. Tools available to the ACO should be used to the fullest extent, e.g., the DLA overhead milestone form, the procedure in paragraph 42.7-11 for timely contract closeout and the various computer products described in 4.804 for expediting contract closeout.

b. When delays in the establishment of final overhead rates through C O determination or audit determination, and/or delays in the completion of contract audit closing statements (final audit reports), cannot be resolved at the field level, the DCASR should provide HQ DLA (DLA-AF) the following information: the name and location of contractor, delays and reasons therefor, fiscal years involved, Military Department or DCAA field audit office responsible for untimely action, and any other data considered pertinent. Upon receipt of the data, HQ DLA will coordinate with the responsible Military Department or HQ DCAA regarding the need for timely action and, as a minimum, obtain target dates for ACO planning purposes.

42.7-14 Indirect Cost Monitoring Office (ICMO). The ICMO was established to assure uniform application of acquisition policies, consistent treatment of cost allowability, and promote timely and equitable settlement of contractor overhead (see DoDI 4245.5, Subject: Indirect Cost Monitoring Office).

a. The referenced DoDI requires that a Master List Report (RCS DD-P&L(A)1557) be prepared annually by DLA and the Military Departments. The Master List Report will be prepared by the RCMS after the close of each Government fiscal year. The annual report will list the contractors for which DLA has cognizance for final overhead rates and will contain the information listed in paragraph F.1.a. of DoDI 4245.5. The Master List Report will be furnished HQ DLA (DLA-AF) within 30 days after the close of the fiscal year so that a consolidated DLA report can be furnished the ICMO within the designated time frame. The ACO shall be responsible for notifying the RCMS in writing of changes in negotiation responsibility as soon as the changes occur. The notification must include the information cited in paragraph F.1.a. of DoDI 4245.5.

b. DLA and the Military Departments are required to submit the following reports on the status of overhead negotiations:

(1) Report on Status of Open Overhead Negotiations (RCS DD-P&L(SA)1558). Status reports will be prepared at 6-month intervals by the ACO and reflect the status of open overhead negotiations as of 30 September and 31 March. The ACO will continue to report on the status of open overhead negotiations until a Report of Completed Overhead Negotiations is filed, see subparagraph (2) below. The Report on the Status of Open Overhead Negotiations shall contain the information detailed in Paragraph F.3.a. of DoDI 4245.5. ACOs should provide meaningful comments as to reasons for negotiation delays, particularly when overheads are open for over a year. The ACO is responsible for submitting the status reports to the RCMS within 7 days after the close of the 6-month period, i.e. by 7 October for the 6-month period ending 30 September and by 7 April for the 6-month period ending 31 March. The RCMS will review the individual reports for completeness and prepare a summary report in the following format.

	Date(s) FAR 42.705-1(b) completed						
CONTRACTOR FYE	(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)
Company "A"-12/31/78....	*	*	*	*	*	*	*
Company "A"-12/31/79....	*	*	*	*	*	*	*

*Enter date completed

The RCMS will furnish two copies of the summary report and individual ACO reports to HQ (DLA-AF) within 20 days after the close of the 6-month period. DLA-AF will then prepare a consolidated report for submission to the ICMO.

(2) Report of Completed Overhead Negotiation (RCS DD-P&L(AR)1559): This report will be prepared by the cognizant ACO after the requirements of FAR 42.705.1(b) are completed. The ACO shall furnish the Report of Completed Overhead Negotiation together with the negotiation memorandum to the RCMS within 45 working days after the overhead agreement is executed. The RCMS will review

the report for completeness, and within 60 days after the overhead agreement is executed, concurrently furnish copies of the report and the negotiation memorandum to HQ DLA (DLA-AF) and to the ICMO at the following address: USDRE/AM(CPF), Room 3D1082, Pentagon, Attention: ICMO, Washington, D.C. 20301. The Report of Completed Overhead Negotiations shall contain the information specified in Paragraph F.4.a. of DoDI 4245.5.

42.7-15 ACO's Overhead Management Controls

a. The ACO must maintain a high degree of management control to assure uniformity in the treatment of contract costs, and for coordinating certain functions of the overhead process with the Military Departments/agencies concerned. Accordingly, the ACO will maintain a summary control of all actions taken in accomplishing the overhead management process with all contractors that meet any of the following criteria:

(1) Normally execute advance agreements for IR&D, B&P or other select elements of cost, or negotiate forward pricing rates.

(2) Have $10 million or more of negotiated Government business.

(3) Are otherwise determined by the ACO to warrant a high degree of overhead management control.

b. The summary will contain, as a minimum, the following information:

(1) The name, address, organizational structure, and fiscal year of the contractor.

(2) Sales data, including the mix of Government and commercial business, number and types of Government contracts.

(3) The overhead expense pools and bases involved, and estimates of the amounts of these pools which are charged to Government contracts.

(4) Items of cost which are negotiated through advance agreements, together with dates of agreements, share and ceiling arrangements, and total estimated amounts to be charged to Government contracts.

(5) The status of all surveys, evaluations, audits, and negotiations with which the overhead management process is concerned.

(6) The status of contractor overhead proposals for forward pricing, billing and final negotiations to include dates received, periods covered, dates submitted for evaluation, and tentative negotiation dates.

(7) Identification of any other Military Department/agency that is responsible for the negotiation of billing and final overhead rates and any advance agreements.

(8) A minimum of three years of historical trend data concerning each of the above items, as applicable.

(9) The DLA Form 1234, Milestones for the Establishment of Final Overhead Rates. The milestone form is to be used by the ACO as a tool to better manage and control the overhead settlement and contract closeout functions, regardless of how overhead is settled. The milestones are targets and are not binding on the contractor or the Government. Nevertheless, aggressive but tactful use of the milestone form by the ACO should significantly improve the timeliness of the overhead settlement and contract closeout processes. The form may be maintained by contract or by contractor depending on the circumstances. It will be completed only for contractors qualifying under 42.7-15a above.

c. This summary will be updated as significant actions involving overhead costs are accomplished.

42.70 MONITORING CONTRACTORS' COSTS

42.70-1 References

a. FAR 42.801, Notice of Intent to Disallow Costs.

b. DFARS 42.70, Monitoring Contractors' Costs.

c. DAR 15-206, Notice of Intent to Disallow or Not Recognize Costs.

d. DAR, section XX, part 10, subject as above.

e. DLAH 8115.1, Guide for Monitoring Contractors' Indirect Cost.

f. DLAM 8300.1, Production Manual for Contract Administration Services, Section 1-800, Cost Monitoring Program.

42.70-2 Scope. This section provides guidance and procedures for implementing a formal DoD program to monitor contractors' policies, procedures and practices for managing and controlling contract costs. Cost monitoring is necessary to assure that DoD contracts are performed in the most efficient and effective manner. Coordination of the various DoD components which perform this monitoring task is essential to avoid duplication of review activities. This Section supplements guidance contained in DFARS 42.70.

42.70-3 General. Primary responsibility for initiating and maintaining cost monitoring programs (CMPs) rests with the contract administration components of the Military Services and DLA.

a. A CMP will be established at contractor locations satisfying all of the following criteria:

(1) Sales to the Government are expected to exceed $50 million during the contractor's next fiscal year on other than firm fixed-price and fixed-price with escalation contracts (i.e., sales on cost and flexibly priced contracts must exceed $50 million);

(2) The Government's share of indirect costs allocable to cost and flexibly priced contract sales is expected to be at least 50% of the total indirect costs for a particular contractor location;

(3) A DCAS activity (DCASPRO or multifunction residency) has been established at the location.

b. Other critical contractor locations having significant Government business but which do not meet the above criteria may be included in the DLA cost monitoring program upon approval of the Executive Director, Contract Management (DLA-A). Locations having annual sales to the Government substantially in excess of $50 million on negotiated contracts, but which fail to meet one of the first three criteria, should be seriously considered for implementation under this exception basis. Requests to initiate a program on the exception basis may be made at any time by the Head of the local office. The request, supporting data and rationale should be forwarded through appropriate command channels to DLA-AF.

c. A full CMP will be maintained so long as the location continues to satisfy the qualifying criteria outlined in paragraph a above. Contractor locations which no longer meet these criteria may be removed from CMP upon approval of the Executive Director, Contract Management (DLA-A).

d. Failure to qualify for inclusion in the DLA CMP pursuant to procedures delineated in paragraphs a and b above does not preclude initiation or continuation of informal and/or limited cost monitoring efforts at other contractor locations. Limited monitoring programs will generally consist of establishment and tracking of FPRAs and/or FPRRs (see 15.809) without the in-depth functional reviews which are the principal element of DLA CMPs.

42.70-4 Responsibilities of the Head of the Local DCAS Office. The Head of the local DCAS activity (DCASPRO or resident office) is responsible for assuring that appropriate resources are applied to cost monitoring efforts. In accomplishing this responsibility, the Head of the office will:

a. Assure that the Region Cost Monitoring Specialist (RCMS) is advised when initiation of a CMP is required (see 42.70-3a), or warranted on an exception basis (see 42.70-3b).

b. Within 30 days after the contractor location qualifies, or is approved for inclusion in the DLA Cost Monitoring Program:

(1) Establish a DLA cost monitoring team of functional specialists under leadership of the ACO. To the extent practicable, team membership shall include, but not be limited to, full-time representatives of the Contract Management and Systems and Engineering elements (See DLAM 8400.2, Part 4). A price/cost analyst shall be designated as the Cost Monitoring Specialist (CMS). In accordance with DLAM 5810.1, Organization of DLA Field Activities, the CMS shall be assigned to the pricing function. The CMS shall dedicate approximately 1,750 hours per year for cost monitoring efforts. Dedicated engineering support shall consist of 1,000 hours or more per year. Occasionally, part-time participation by Quality, Industrial Security, and other functional elements may be necessary. Team assignments will be coordinated with the Chiefs of functional elements providing support to the monitoring effort to assure that adequate resourcing is available.

(2) Coordinate with the manager of the cognizant DCAA office to assure audit representation and participation in cost monitoring efforts.

(3) Arrange through the RCMS for special training in the techniques of cost monitorship required by individual team members. Requests for formal training should be processed through appropriate training channels.

c. In conjunction with the head of the local audit office, approve the annual cost monitoring plan (after ACO concurrence) upon determining that the plan is comprehensive and in conformance with this procedure and DFARS 42.70. Any questions regarding sufficiency of the plan should be referred to the RCMS.

d. Sign reports of joint DCAS and DCAA reviews of contractor operations prior to submission by the ACO to the contractor.

e. Approve the annual cost monitoring report (ACMR) upon determining it to be complete and in conformance with part 42.70-10.

42.70-5 Responsibilities of the ACO. Immediately following identification of the cost monitoring team, the ACO will advise the contractor of the Government's intention to initiate a Cost Monitoring Program and request support and cooperation. Contractors are encouraged to participate in appropriate aspects of the planning and review efforts. The contractor should be asked to identify appropriate individuals to interface with the Cost Monitoring Team. As the Government team leader, the ACO will:

a. Perform the following functions which relate specifically to the CMP:

(1) Initiate annual planning sessions in January of each year to assure that an approved, consolidated annual cost monitoring plan is completed by the beginning of the next Government fiscal year. The ACO will request each DCAS functional element to prepare a prioritized list of functional reviews which should be performed during the next 2-3 years. The listing should be provided to the CMS by the first of February. The CMS will prepare a consolidated listing of reviews proposed by DCAS representatives in preparation for comprehensive planning sessions with DCAA. The approved plan developed after discussion with DCAA will identify all cost-related reviews which will be accomplished by DCAS and DCAA during the next Government fiscal year. A copy of the approved plan and subsequent revisions will be provided to the RCMS.

(2) Attend the exit conference held at the conclusion of each review of contractor operations to discuss findings, tentative conclusions and recommendations. Exit conferences on joint DCAS and DCAA reviews will be arranged by the ACO of the CMS.

(3) Forward the report to the contractor for appropriate action within 10 working days following receipt of reports and reviews performed pursuant to the cost monitoring plan, or take whatever action is deemed appropriate in the circumstances. See 90.01 for contract audit followup resolution, tracking and reporting requirements involving findings in operational reviews performed by DCAA.

(4) Keep the CACO advised of the planning and results of reviews of contractor operations, if applicable, and any other significant matters.

b. Negotiate FPRAs or establish FPRRs for labor rates, overhead rates, and bid factors, in accordance with procedures of paragraph 15.809. The FPRA or FPRR will be established as promptly as practical in the monitoring cycle (see paragraphs 15.809-3 and 15.809-4 for specific procedures on FPRAs and FPRRs).

c. Negotiate other advance agreements whenever appropriate to resolve complex issues of cost allowability in advance of cost incurrence. Position taken on major cost issues will be coordinated with the RCMS to assure uniformity and consistency within DLA and among other DoD activities.

d. Establish billing rates for interim vouchers or reimbursable type contracts and/or progress payments on fixed-price type contracts, in accordance with procedures in part 42.7.

e. Issue a notice of intent to disallow or not recognize costs when required in accordance with part 42.801. The notice will be issued in advance of cost incurrence whenever possible. The RCMS and the CACO will be advised prior to issuance of a notice.

f. Advise procuring activities immediately when there is a need to update or amend the FPRA or the FPRR and provide interim rates for use by PCOs. The ACO will also include a target date for the establishment of the revised FPRA or the FPRR. Early notification will permit major weapon system program managers and other buying activities to take appropriate action.

g. Reserved.

h. Assure that the contract auditor will coordinate all DCAA Form 1 cost suspensions and disallowance actions with the ACO prior to issuance.

i. Establish final indirect cost rates when: (1) DCAA audit reports have been received prior to calendar year 1985 and (2) audit reports were received in calendar year 1985 and negotiation discussions have been initiated. DCAA has responsibility for determining other final indirect cost rates. If ACO negotiated, establish final overhead rates in accordance with part 42.7, except where rates are established on a centralized basis by a Corporate ACO (see part 42.6). Where the ACO is part of a CACO program and final rates are to be negotiated locally, the ACO will assure that the negotiation objective is fully coordinated with the CACO. When final rates are to be negotiated by the CACO on a centralized basis, the DACO or cognizant ACO will provide analytical and negotiation assistance as required.

j. Submit agreements on forward pricing rates and/or factors and final overhead rates for Board of Review action in accordance with part 90.16.

k. Submit section 2 of the annual cost monitoring report (see paragraph 42.70-10) through the head of the local CAO to the Regional Contract Management Director no later than 15 November of each year.

42.70-6 Responsibilities of the CMS. The CMS is the ACO's representative for assuring effective operation of the CMP on a day-to-day basis. In accomplishing this responsibility, which includes performance of functions delineated in DFARS 42.70, the CMS will:

a. Coordinate with representatives of DCAS functional elements and DCAA to compile a comprehensive list of current weaknesses and deficiencies in the contractor's operations identified in recent reports of reviews and audits. In accomplishing this objective, the CMS will request team members to review memoranda and reports of pricing and costing reviews and system surveys. Data to be analyzed include but are not limited to Cost/Schedule Control System Criteria (C/SCSC) validation, demonstration and surveillance activities; Contractor Estimating Methods Reviews (CEMRs); Contractor Purchasing System Reviews (CPSRs); Contractor Insurance/Pension Reviews (CIPRs); Contractor Employee Compensation System Reviews (CECSRs); Automatic Data Processing Equipment (ADPE) reviews; Cost Accounting Standards (CAS) reviews; budget and accounting system reviews; energy utilization and conservation reviews; DCAA functional reviews; and other financial and accounting reviews performed by DCAA. The list of current weaknesses and deficiencies of the contractor's operations will be used to identify specific areas which should be considered in developing the annual plan.

b. Coordinate with the audit representative prior to development of the annual plan to determine whether the contractor's budget and control system includes the following minimum requirements:

(1) A procedure within the company for preparation, review, approval, and surveillance throughout the budget planning and control process. The budget must be consistent with the methods used in estimating and allocating direct and indirect costs.

(2) A methodology for making a reasonable estimate of sales volume over the budget period and for translating that volume into forecasts of the allocation bases.

(3) A procedure to establish and document the necessity for direct and indirect functions and to relate those necessary functions to program requirements.

(4) A procedure to establish the reasonableness of costs forecast for necessary functions. This procedure must provide for the identification of specific management and technical decisions employed for significant cost expenditures, for example, capital expenditures, technology advancements, plant expansion, etc.

(5) A tracking and control system which will show the relationship of actual costs to forecast costs, with a procedure to highlight significant deviations from the budget.

(6) A flexible budgeting procedure for adjusting basic assumptions when a major fluctuation in predicted volume occurs. Establishment by the contractor of automatic planned changes in budgeted costs based on alternative assumptions is highly desirable.

(7) A reporting system which satisfies the needs for identifying cost variances to company management to enable timely analysis and correction. Deficiencies should be identified and targeted for further review at time of preparation of the annual cost monitoring plan.

c. Develop the annual cost monitoring plan. The CMS will:

(1) Prepare a consolidated listing of reviews proposed by DCAS representatives based on inputs from all functional elements. In January of each year, the CMS will request that inputs be provided by the first of February of each year. The listing of proposed reviews shall be prioritized and estimated project resource requirements of each function identified. The CMS shall assure that reviews focus on significant aspects of contractors' operations such as materials acquisition, manufacturing operations, quality assurance, labor utilization, contractor facilities and equipment. Support required from activities outside the local CAO should be identified. The list will be used by the head of the CAO and CMS in the joint planning sessions with DCAA. These planning sessions with DCAA normally will be initiated in February of each year since DCAA begins developing its Operations Audit Programs during the second quarter of each Government fiscal year.

(2) Assure that the plan reflects primary responsibility and/or team leadership. Support roles

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should be consistent with traditional review responsibilities. Responsibility for existing reviews will continue to be assigned to the responsible agency (e.g., CPSR, CIPR, CECSR to DCAS, CEMR and CAS reviews to DCAA). The organization assigned lead responsibility will prepare a comprehensive report based on CAO and audit reviews. When the CAO has team leadership responsibility for a joint review, the results of the audit and technical review(s) will then be incorporated in a final report prepared by the CMS. The CMS will prepare well documented reports supporting operational review findings and savings.

(3) Assure that the plan contains an appropriate balance of reviews of contractors' operations and overhead rate activities. Approximately seventy percent of the total CMS effort in the plan shall be directed toward reviews of significant contractors' operations. The remaining thirty percent shall be for overhead rate effort, i.e., forward pricing rate agreement (FPRA) negotiation and tracking.

(4) Include approximately 1,750 hours for the CMS and 1,000 hours of engineering support in the plans. CMSs and engineers will perform separate and/or joint DCAS reviews of contractors' operations. CMSs will prepare well-documented written reports supporting their own reviews and/or team review findings and savings.

(5) The CMS shall use the plan format in 42.70–11.

(6) Arrange for the annual plan to include provision for making final overhead settlement in accordance with milestones included in DLA Form 1234, Milestone for the Establishment of Final Overhead Rates (see paragraph 42.7–15).

(7) Coordinate development of the plan with the RCMS and forward a copy of the potential plan to the RCMS to assure consistency and effectiveness in implementing the CMP.

d. Assure financial and other data used in planning reviews and obtained during operations reviews are made available when needed by functional element(s) involved in cost monitoring, pricing, etc. Data should be shared to the maximum extent possible to minimize requests for data from the contractor.

e. Participate in the analysis of forward pricing rate proposals, including the "scrubbing" of historical labor rates, overhead expense pools and bases, etc., whenever the proposal or analysis is based upon recorded cost. The CMS will assure the contractor's projected sales base is validated through contact with procurement activities having significant business with the contractor and prepare a comprehensive pricing report, including technical and audit evaluations, to be used in establishing FPRAs or FPRRs (see Part 15.809).

f. Keep the price/cost analyst advised of the status of reviews of forward pricing rates and factors, final overhead rates, CMP reviews of the contractor's operations and issuance of Notices of Intent to Disallow or Not Recognize Costs, so that current information which may impact the results of price/cost analyses or other case assignments may be considered and included in reports issued by the analyst.

g. Arrange for or request assistance from functional elements not involved in the cost monitoring program on a full-time basis when their support is necessary to accomplish reviews of contractor operations (e.g., by Industrial Specialist, Quality, Industrial Security, Transportation, etc.).

h. Coordinate with CMP team members during performance of scheduled reviews and provide guidance and assistance as necessary. The CMS will participate in all reviews performed by the CAO. When the CAO has team leadership responsibility for a joint review, the CMS will prepare a comprehensive report reflecting results of audit and technical reviews.

i. Attend the exit conference held at the conclusion of each review of contractor operations to discuss findings and tentative conclusions and recommendations. Exit conferences on joint DCAS and DCAA reviews will be arranged by the ACO or the CMS.

j. Monitor the status of CMP reports provided for contractor comment or action and assure that supportable cost positions are included in subsequent pricing actions, i.e., FPRA, FPRR and final overhead settlement objectives.

k. Maintain documented files to support review findings, including complete work papers sufficient to support review recommendations and conclusions, and identify significant cost issues addressed in Government reviews of contractor operations.

l. Evaluate CMP progress at least quarterly and issue a written status report to the DCASPRO or DCASMA Commander, Contract Management Division Chief, Administrative Contracting Officer, and the Region Cost Monitoring Specialist. Report will include status of all reviews included in the CMP, including those completed with estimated savings and projected dates when remainder will be completed. This will assure compliance with the annual plan and promote timely review completion.

m. Prepare section 2 of the ACMR (see paragraph 42.70–10) for the ACO's submission through the head of the CAO to the Regional Contract Management Director no later than 15 November of each year.

42.70–7 Responsibilities of Other Team Members. Representatives of each functional element supporting the CMP will be requested to:

a. Review as appropriate memoranda and reports of all pricing and costing reviews and system surveys performed of the contractor's operations in the past year(s). As a result of this review, team members should prepare a listing of weaknesses in the contractor's systems which have not been corrected and develop a prioritized list of reviews which should be made of the contractor's operations. The list should include significant aspects of contractor's operations such as materials acquisition, manufacturing operations, quality assurance, labor utilization, facilities, property and equipment. The list should project resource requirements for the review, suggest target dates for initiation and completion, and indicate any assistance required from other functional elements. Each functional element should assure adequate resources will be available for its performance of proposed reviews. In particular, engineering support of 1,000 hours or more shall be made available at each cost monitoring site. The ACO will request that team members submit the list of proposed reviews to the CMS by the first of February of each year to allow for the development of a fully coordinated monitoring plan for the next Government fiscal year. Team members may be requested to attend planning sessions.

b. Provide written reports to the CMS covering assigned reviews of contractor operations and attend exit conferences for such reviews as required.

c. Submit a quarterly report to the CMS of the accomplishments, problem areas encountered and resolutions made. The quarterly report will include the number of hours expended by the functional element in its cost monitoring effort. This information will be used by the CMS in preparing the ACMR (see paragraph 42.70-10).

42.70-8 Responsibilities of the Region Cost Monitoring Specialist (RCMS). The RCMS will:

a. Develop, evaluate, and improve procedures, as required for implementing the CMPs in accordance with DoD Cost Monitoring policy, Headquarters Directives, and, to the extent applicable, the DoD-NASA "Guide for Monitoring Contractors' Indirect Cost" (DLAH 8115.1).

b. Provide assistance as necessary to assure that annual cost monitoring plans are comprehensive and are consistent with the requirements of DLAH 8115.1 and this procedure. If the plan is deficient, advise the cognizant CMS of the necessary corrective actions.

c. Assist CMSs and other team members in all phases of program implementation.

d. Establish and maintain liaison with the DCASR System and Engineering focal point for cost monitoring, other RCMSs and the HQ DLA Cost Monitor (DLA-AFP).

e. Serve as DCASR liaison with the DCAA Regional office for matters involving CMPs.

f. Develop procedures and management controls to assist the Chief, Financial Services Division, in evaluating the effectiveness of each CMP.

g. Act as the principal advisor to the Chief, Financial Services Division, in policy matters involving CMPs.

h. Review positions developed by ACOs in anticipation of negotiating FPRAs, other advance agreements, final overhead settlements, resolutions of DCAA Forms 1 or Notices of Intent to Disallow or Not Recognize Costs to assure consistency with DoD policies and directives (see Parts 15.809, 42.7, 31.2, and 42.801 respectively).

i. Provide ACOs, CMSs, price analysts or other technical members of CMP teams with data available from the DCASR Financial Services data bank, including other reviews in the Region and annual lists of reviews distributed by HQ DLA-AF.

j. Assist the ICMO as necessary in specialized research relating to complex cost issues and problems upon coordination with DLA-AF (see 42.7-14).

k. Assure submission of the ACMR no later than 30 November of each year (see 42.70-10).

42.70-9 Safeguarding Contractor Information. The Cost Monitoring Team members will insure that the contractor's financial data submitted in support of monitoring efforts will be protected from disclosure to unauthorized persons. The supporting detail regarding such matters as future sales, expansion programs, or other budget data will be disclosed only to Government personnel having a demonstrated need for that information, e.g., in connection with their contributions to the team effort (see Title 18, U.S. Code, Section 1905, and 15.805-14 of this manual for penalties for unauthorized disclosure of information).

42.70-10 Annual Cost Monitoring Report (RCS DLA(A)2086(A))

a. Each DCASR and CAO cognizant of a contractor location included in the DLA program will complete an annual report showing accomplishments, problem areas and resources devoted to the program. Section 1 of the CMR is to be completed by the Region staff. It provides for identification of staff and technical support provided to the program DCASR-wide. In addition, it provides an opportunity for each DCASR to identify problem areas encountered and suggest changes to operating policy and/or procedural guidance. A separate section 2 of the report is prepared for each CMP. Section 2 includes provisions for reporting projected sales data for the contractor's next fiscal year, identification of resources expended on the program, identification of significant techni-

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cal accomplishments, a discussion of problem areas encountered, and suggested changes to policy or procedure which may assist in problem resolution.

b. Section 2 will be forwarded to the CM Director no later than 15 November of each year (see 42.70-5k) for consolidation with section 1. The entire ACMR will be forwarded to DLA-AFO by 30 November.

c. The RCMS shall use the report format shown below.

ANNUAL COST MONITORING REPORT RCS DLA(A)2086(A)

Section 1

A. *Identification of Cost Monitoring Sites:* List the contractors included in the CMP and provide a cross-reference to the individual program reports furnished in section 2.

B. *Resource Expenditures:* Provide the names, functional organizations and hours expended by Region personnel directly engaged in providing technical and/or staff assistance to the CMP. Do not include efforts expended by DCAA or DLA personnel in performing other duties involving Cost Accounting Standards, Contractor Review Board actions, or systems reviews, even though the efforts are related to cost monitoring.

C. *Observations and Recommendations:* Briefly summarize problem areas identified through technical assistance or staff surveillance visits. Identify areas where program enhancement may be made by changes to DLA or DoD cost monitoring policy and/or procedural guidance.

d. The CMS shall use the report format shown below.

ANNUAL COST MONITORING REPORT RCS DLA(A)2086(A)

Section 2

A. Implementation Site:

1. Contractor's name and location, including complete corporate identification, e.g., J&B Corporation, Government Servicing Group, Testing Division, Meridian, Nebraska.

2. Sales data for contractor's next (not current) fiscal year ending on (date) _________ .

a. Total projected sales $_________ .
b. Projected commercial sales $_________ .
c. Projected total Government sales:
*(a) DoD $_________ .
(b) NASA $_________ .
(c) DOE $_________ .
(d) Other $_________ .

d. Projected Government cost and other flexibly-priced sales:
(a) DoD $_________ .
(b) NASA $_________ .
(c) DOE $_________ .
(d) Other $_________ .

*Identify and list all projected DoD sales for the contractor's next FY by military service, DoD agency, including FMS.

B. Resource Expenditures: Report the hours expended by the CMS for the following activities:

Functional Reviews of Contractor Operations _____________

Review and Negotiation of Contractor FPRA Proposals or Establishing FPRRs _____________

Tracking FPRAs/FPRRs _____________
(If FPRA/FPRR is not in effect, report time expended in tracking actuals vs. budget)

Prepare Annual Plan and Administrative Reports _____________
Cost Accounting Standards _____________

Other: (Identify time in excess of 100 hours) _____________

Also provide the names, organizational assignment, and hours expended by DCAS operational personnel (e.g., ACO, price/cost analyst, engineer) directly involved in functional reviews or other individuals specifically assigned to the CMP.

C. Significant Technical Accomplishments:

1. Budget and Control Systems. Discuss findings and any necessary corrective actions taken by the contractor as a result of the evaluation of the adequacy of the contractor's budget and control systems (42.70-6b).

2. Annual Cost Monitoring Plan. Provide a copy of the latest approved monitoring plan and discuss problems encountered in its development (see 42.70-11 for CMP plan format).

3. FPRAs, FPRRs, and Formula Pricing. Discuss agreements and/or recommendations made during the reporting period for overhead rates and pricing factors. Indicate the period, the amount of costs (by fiscal year) covered by the agreements or recommendations, and the current status of each (e.g., proposal in preparation, under review, current rate(s)). Summarize by year the potential costs avoided by the Government's use of the FPRA and/or FPRR rates. Also identify difficulties encountered in establishing the rates and/or factors.

4. Other Advance Agreements. Discuss advance agreements on specific areas of cost in effect during the reporting period. Identify the period of the

agreement, cost elements, and dollar value of costs covered by the agreement.

5. Final Overhead Rate Settlement. List the fiscal years for which final overhead rates were established during the reporting period. For each overhead year finalized, include the total cost questioned, total costs sustained during the negotiations, and the Government's share of such sustained costs. Also discuss any unusual cost issues settled during the negotiations.

6. Functional Reviews. Reconcile the annual cost monitoring plan (ACMP) (including hours) with actual accomplishments, summarizing the status of each cost monitoring effort and/or review included in the plan, the DCAS activity hours applied, and outcome of each review. Provide a full description of the purpose of each review, review approach, innovative techniques used (e.g. questionnaires, surveys, time and motion studies, etc.) and findings. (Significant reviews having wider applicability will be distributed annually by DLA-AF.) Furnish details as to whether the contractor agreed to the findings and/or the ACO's final disposition of the review findings. Include cost avoidances realized by the Government. Do not list DCAA reviews in which DCAS functional elements did not play a major role.

7. Cost Avoidance Actions. Identify other significant cost avoidance actions taken during the reporting period. Indicate cost elements, dollar value and Government share of each action challenged and amount avoided and/or saved, for each fiscal year. Include a discussion of and similar information for notices of intent to disallow or not recognize cost which were issued. Indicate the disposition or current status of each.

D. Observations and Recommendations: Briefly summarize problem areas found during the reporting period. Suggest changes which would assist in resolving these problems or enhancing the program.

42.70-11 CMP Plan Format. All annual cost monitoring plans shall provide the following:

1. Cover Page: Indicate plan title; contractor name; city and state; name of DCASPRO or management area with administrative cognizance; period of plan and appropriate signatures.

2. Table of Contents.

3. Introduction: Indicate plan purpose, scope, procedures and responsibilities.

4. Brief summary of contractor's major products and customers and an organizational structure showing divisions included under the CMP.

5. Scheduled Cost Monitoring Reviews: Report information in the following outline format.

A. Review Type (i.e., Joint, DCAS, DCAA or System Review)

1. Title
  a. Background
  b. Objective
  c. Cost Impact
  d. Staffing/Resources
    1. Office of Responsibility
    2. Estimated resource requirements;
      (a) DCAS
        CMS __________ hours
      (b) DCAS Price Analyst
        __________ hours
      (c) DCAS engineer
        __________ hours
      (d) DCAS industrial specialist
        __________ hours
      (e) Other
  e. Review schedule

6. Milestone chart for scheduled reviews.

7. Cost Monitoring Plan summary sheet (see 42.70-12 for format).

8. Appendices as appropriate.

42.70-12 CMP Plan Summary Sheet.

a. Each cost monitoring site included in the CMP will complete a Cost Monitoring Plan summary sheet summarizing specific cost monitoring overhead review and non-cost monitoring efforts. The summary sheet will also show resources and planned hours devoted to the program. The summary sheet is intended for planning purposes. Therefore, some adjustment may be necessary during the plan's implementation.

b. The CMS shall use the summary sheet format shown below.

42.70-13 CMP Planning and Progress Reporting Milestones. The milestone chart below shows the typical CMP planning and reporting process as described in this section. The chart is intended for management and planning purposes. The milestones are targets and are not binding on the contractor. Therefore, some deviation from target dates may be necessary for individual CMPs.

COST MONITORING PLAN SUMMARY SHEET

LOCATION: ....

NUMBER OF CMSs ASSIGNED: ....

	PLANNED HOURS			
	CMS	ENGINEER	PRICE ANALYST	OTHER
SPECIFIC COST MONITORING EFFORT				
(List Individual Efforts)				
Joint Reviews				
DCAS Reviews				
DCAA Reviews				
TOTAL HOURS[1]				
OVERHEAD REVIEW EFFORT[2]				
(List Individual Efforts)				
Joint Reviews				
DCAS Reviews				
DCAA Reviews				
TOTAL HOURS				
NON-COST MONITORING EFFORT				
(List Individual Efforts)				
TOTAL HOURS				
TOTAL HOURS[3]				

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[1] Approximately seventy percent of total CMS effort.

[2] Includes tracking and monitoring costs, FPRA development and final overhead rate negotiations.

[3] Should be approximately 1,750 hours for each CMS and 1,000 hours or more for engineering support.

CMP PLANNING AND PROGRESS REPORTING MILESTONES

CMP PLANNING AND PROGRESS REPORTING MILESTONES

JANUARY	FEBRUARY	APRIL	JULY	OCTOBER	NOVEMBER	DECEMBER
ACO issues call to DCAS functional elements for cost monitoring topics for next Government Fiscal Year (GFY).	DCAS elements submit topics to CMS by 1 Feb; CMS begins planning sessions with DCAA in February.	Planning Continues ➡	Annual CMP plan completed by October; monitoring effect for next GFY begins.			

FPRA OR FPRR ESTABLISHMENT (SEE 15-602)

JANUARY	FEBRUARY	APRIL	JULY	OCTOBER	NOVEMBER	DECEMBER
			ACO requests FPRA proposal 6 months before next fiscal period(s)* ➡		FPRA proposal submitted, reviewed and FPRA or FPRR established.	

*Assumes contractor is on calendar fiscal year.

PROGRESS REPORTING

JANUARY	FEBRUARY	APRIL	JULY	OCTOBER	NOVEMBER	DECEMBER
CMS and team members assess progress for the prior quarter; CMS issues status report.		CMS and team members assess progress for the prior quarter; CMS issues status report.	CMS and team members assess progress for the prior quarter; CMS issues status report.	CMS and team members assess progress for the prior quarter; CMS issues status report.	CAO and DCASR prepare Annual Cost Monitoring Report (ACMR) and submit to HQ DLA (AFP).	

42.71 VOLUNTARY REFUNDS

42.71-1 References

a. DFARS 42.71 Voluntary Refunds
b. DAR 1-312 Voluntary Refunds

42.71-2 General. A voluntary refund is a payment or credit not required by any contractual or legal obligation. It can apply to prime or subcontractors. It may be unsolicited, or it may be made in response to a request by the Government. Voluntary refunds should be recommended only if it is considered that the Government has been overcharged or inadequately compensated, due at least in part to the fault of the contractor or subcontractor.

42.71-3 Decision Authority. DFARS 42.7101 delegates the authority to solicit a voluntary refund to the Head of the Procuring Activity (HPA). For ACO-negotiated actions, the HPA is the Executive Director, Contract Management (DLA-A).

42.71-4 Procedures for Obtaining DLA-A Approval. Recommendations for soliciting voluntary refunds shall include: Contract number; contractor's name and address; rationale for the recommendation to solicit the voluntary refund (including all pertinent facts and circumstances); recommended amounts to be refunded; and a copy of the proposed letter to the contractor which requests the voluntary refund. (This letter should include sufficient facts to help the contractor understand the rationale in asking for a refund, and procedures to be followed in submitting refund checks.) The recommendation should be routed through the CAO Division Chief and the DCASR Contract Management, and coordinated with DCASR Counsel, and then to HQ-DLA. After approval at the DLA-A level, the letter requesting the voluntary refund should be mailed to the contractor. If the contractor refuses to pay a refund, DLA-A should be advised.

42.71-5 Refund Checks. DFARS 42.7102(b) requires all voluntary refund checks be made payable to the office designated for contract administration.

42.71-6 Procedures for Handling Refund Checks. The following procedures shall be used whenever a voluntary refund is received by check:

(1) The ACO upon receipt of a check shall immediately forward it to the disbursing officer making payments for the contract (normally the DCASR).

(2) The ACO in forwarding the check shall, where possible, provide a letter identifying it as a voluntary refund, giving the contract number or numbers involved, and the account number of the appropriation to which the refund should be credited. However, under no circumstances shall forwarding and collection of the check be delayed for this information.

(3) The disbursing officer shall collect the check and forward the funds to the person responsible for control of funds.

(4) In order to maintain control over checks received by the Government, the ACO shall request acknowledgement of receipt of a copy of the collection voucher for all checks forwarded to the disbursing officer. Immediate action shall be taken to trace any check for which such acknowledgement or voucher has not been received within 5 working days after transmittal.

42.801 NOTICE OF INTENT TO DISALLOW OR NOT RECOGNIZE COSTS

42.801-1 References

a. FAR 42.801, Notice of Intent to Disallow Costs.

b. DFARS 42.801, Notice of Intent to Disallow Costs.

c. DAR 15-206, Notice of Intent to Disallow or Not Recognize Costs.

42.801-2 Scope. This section provides guidance for the issuance of a cost avoidance notice when the ACO determines direct or indirect cost being incurred or planned for incurrence on cost type or flexibility-priced contracts is not allowable.

42.801-3 General

a. The clause entitled "Notice of Intent to Disallow or Not Recognize Costs," is required in cost and flexibly priced contracts. It provides authority for the Government to issue a formal cost avoidance notice to the contractor. If the contractor does not respond in 60 days the notice becomes the ACO's final decision under the disputes clause.

b. Issuance of a notice of intent to disallow or not recognize costs will normally result from a review performed by the cost monitor, systems analyst, auditor, price analyst, or other technical personnel which indicates a need for the cost avoidance action. Issuance of a notice is likely to result from intensive reviews of contractor operations performed under a Cost Monitoring Program or Contractor Insurance/Pension Review, Contractor System Review, Contractor Acquisition of Automatic Data Processing Equipment, and Contractor Purchasing System Review (See: DLAM parts 28.3; 31.205; 42.13 and 44.3 respectively).

42.801-4 Procedures

a. The decision to issue a notice shall be made only after discussions are held between the contracting officer and the contractor, and shall be based on a written report. As a minimum, the notice will contain information as specified in FAR 42.801.

b. Before issuing the notice, the ACO will coordinate with the Regional Cost Monitoring Specialist (RCMS) to assure the contemplated action is consistent with DoD policies and directives. When the notice covers indirect costs, the ACO should obtain concurrence of the CACO if the CACO has final overhead settlement authority. Audit coordination will be obtained before the notice is issued for indirect costs.

c. The contracting officer will distribute copies of the notice to the RCMS, the CACO, the auditor and ACOs cognizant of corporate elements having substantial Government business.

d. The contract clause allows the contractor 60 days to contest the notice. In addition, it provides that the ACO shall, within 60 day of receipt of a written response from the contractor, either withdraw or modify the notification in writing or issue a final decision pursuant to the disputes clause of the contract. If a notice is modified and reissued to the contractor the time phasing begins again. The contracting officer shall not delay taking action beyond this 60-day period. Since the contract clause does not provide an extension of time, the ACO's failure to take the required action could be a technical violation of the contract clause. When indirect cost is involved, the final decision will be rendered by the ACO having authority for final overhead settlement (see part 42.7-5). For contractors where final overhead is settled by audit determination, the cognizant ACO will issue the final decision as required by the disputes clause in DoD contracts. The proposed final decision on an appealed notice and a memorandum describing the pertinent events and factors considered in reaching the decision will be furnished to the Board of Review for appropriate action (see Part 90.16).

42.11 ANTICIPATED OR ACTUAL DELAY IN DELIVERY OR PERFORMANCE

42.11-1 References

a. FAR 42.11, Production Surveillance and Reporting.

b. FAR 49.402-3, Procedure for Default.

c. FAR 52.242-2, Production Progress Reports.

d. DFARS 42.11, Production Surveillance and Reporting.

e. DFARS 49.402-3, Procedure for Default.

f. DLAM 8300.1, Production Manual for Contract Administration Services.

42.11-2 General

a. Reports of anticipated or actual delays are made using Revised Delivery Forecast (RDF) Procedures, DD Form 375-2, Delay in Delivery (Flash Notice), DD Form 375/Production Progress Report, 375c, Production Progress Report (Continuation), letter or message (except in the case of strikes).

b. There are two types of production progress reports: those prepared by the contractor; and those prepared by the CAO Production representative. The CAO Production representative will use the Revised Delivery Forecast (RDF) Procedures, DD Form 375-2, for the initial report of anticipated and actual delinquencies and as a method of follow-up reporting. A DD Form 375 and 375c will be prepared by the Production element whenever it perceives the need, normally on delays over 60 days on bilateral contracts, or when specifically requested by the ACO or PCO. ACO or PCO requests may be done orally or in writing. If the IS feels that a DD Form 375 and 375c should be prepared, he will coordinate with the ACO to determine whether the report should be issued. If the Production element advises of a delay by the contractor in submitting a required DD Form 375, the ACO may withhold an amount from payment in accordance with FAR 52.242-2. The ACO should advise the Production element of actions taken under this clause.

c. Where there is an *anticipated* delay in delivery or performance, the ACO is responsible for taking prompt action to urge the contractor to perform in a timely manner. However, in the event of an actual delay in delivery or performance, and before the PCO has determined the corrective action to be taken, the ACO will ensure that no action is initiated or taken by CAO personnel which could be construed as waiving the right of the Government to terminate the contract for default.

d. DD Form 375-2, DD Form 375, message, or letter will be promptly forwarded to the appropriate acquisition activity representative.

42.11-3 Procedures

a. *DD Forms 375 and 375c, Production Progress Report.* When the DD Form 375/375c is used to report an anticipated or actual delay, the Production representative will coordinate the draft report with the ACO. The ACO will:

(1) Develop a recommended course of action after coordinating with the Production representative and such other team members as he deems necessary. The ACO's recommendation will be given to Production who will include it when typing the final DD Form 375. In the course of developing his recommendation, the ACO may discuss with, or write to, the contractor in an effort to obtain a realistic revised schedule. In the event the ACO obtains a revised schedule that differs from that developed by the Production representative, the difference should be resolved before the report is released. The contractor should be reminded of his responsibilities under FAR clause 52.212-8, Priorities, Allocations, and Allotments, specifically the requirements of sections 9 and 28 of DPS Reg. 1, when incorporated in the contract. When the basis for an excusable delay does not exist, the ACO should determine if the contractor desires to offer consideration for extension of the delivery schedule. When making the request, the ACO should emphasize to the contractor that: he does not have authority to extend the delivery schedule, except when so delegated; he is only seeking information upon which to base a recommendation to the PCO; and before contacting the PCO, he would like to know whether the contractor desires to offer consideration for an extension and, if so, what type. The ACO should not enter into discussions as to the sufficiency of the consideration or express opinions as to whether the PCO will be willing to extend the schedule, unless the PCO has previously expressed such willingness.

(2) Lead the team effort to ensure that the DD Form 375c is both comprehensive and processed in a timely manner, i.e., within 4 working days, after receipt of a contractor-prepared DD Form 375. A CAO-initiated DD Form 375 and 375c will be processed within 5 working days after the Production representative has (a) determined the need for a DD Form 375 and received ACO concurrence or (b) has received a request from the ACO or PCO. ACO team members should be responsive to the ACO's request for additional information so that processing is not delayed.

(3) Ensure compliance with the DD Form 375c distribution requirements of FAR/DFARS 42.1106, and as otherwise specified in the contract. When the status control activity or inventory control manager is not identified in the contract, their copy of the DD Form 375, marked "Status Control

Activity or Inventory Control Manager" or "SCA..ICM Copy," will be routed to the purchasing office. Annotate the official file copy of the DD Form 375c or forwarding letter to indicate the specific distribution made. On contracts awarded by Air Force ALCs, purchasing office copy of the report will be marked for distribution to the attention of "Code PMDO".

b. *Developing ACO Recommendations.* ACOs will make definitive recommendations, fully supported by the facts of the case, together with the rationale leading to the recommendations. The recommendations will, as a minimum, encompass those areas in DFARS 42.1106(b)(2)(iii). Simple statements such as "recommend issuance of Show Cause Notice" or "recommend revision of delivery schedule" must be avoided. When the contract provides for progress payments, and in the ACO's judgment, the amount of UPP could influence the PCO's decision, the amount of UPP will be included along with the ACO's recommendations. To facilitate PCO response, a preprinted postcard (see part 42.11-4) may be used.

(1) *Recommending Delivery Schedule Revision.*

(a) The ACO should always check the available files and records prior to requesting authority to amend the delivery schedule to ensure that such authority has not already been delegated.

(b) When the ACO recommends a revision of the delivery schedule, the recommendation should encompass the following:

1. A delivery schedule considered realistic by the contractor, production representative and ACO.

2. The extent to which the contractor may have excusable cause of delay. An excusable delay is one which is beyond the control and without the fault or negligence of the contractor or his subcontractors. Several types of excusable delays are listed in the Default clause but the list is not all inclusive. One such excusable delay not listed in the clause is a delay due to critical material shortages. If the contractor cites critical material shortages as the cause of the delay, the ACO should verify that the contractor has taken all reasonable and necessary steps in an attempt to obtain the required material. If the facts indicate that the delay was an excusable delay not due to the fault or negligence of the contractor or subcontractors, the ACO should recommend that the PCO issue a no-cost extension to the contract. Under no circumstances should the recommended extension to the delivery schedule exceed the number of days attributable to the excusable delay.

3. A request for the PCO to amend the contract and, if appropriate, an offer by the ACO to perform this service.

4. For those PCOs who historically have been requesting the ACO to amend the contract the PCO should also be:

a. Asked to furnish any available information that would have a bearing on the consideration (if appropriate).

b. Advised that if requested, the ACO will proceed to negotiate and issue the necessary supplemental agreement without further contact with the PCO.

(2) *Recommending Cure or Show Cause Notices.* The ACO must exercise care to ensure that a recommendation for the issuance of a Cure or Show Cause Notice is not made unless the ACO has sufficient knowledge of the urgency of the requirement to support a Termination for Default action. The issuance of either notice to a contractor is improper when there is no real intent on the part of the Government to terminate the contract for default. The use of such notices to coerce performance of the contract, rather than as essential elements of the default process, could weaken their force and effect in cases where default is in fact contemplated. If the ACO determines that the issuance of either a Cure or Show Cause Notice is warranted, a recommendation to this effect will be included in the notification to the PCO and substantiated by such facts as whether or not the contractor is at fault for the anticipated or actual delinquency; how this was determined; and the probable effect on the contract delivery schedule. The PCO, after review and consideration of the ACO's recommendations and the factors in FAR/DFARS 49.402-3 may, if practical, issue or authorize the ACO to issue a cure or Show Cause Notice. ACO-prepared notices will be in the format shown in FAR 49.607. When that format must be modified, the prior concurrence of Counsel should be obtained. Upon receipt of either a response to a Cure Notice indicating that the potentially delinquent condition has not been cured or a copy of the contractor's response to a Show Cause Notice, the ACO will promptly advise the PCO with appropriate comments and recommendations.

c. *DD Form 375c, Followup*

(1) When a PCO response to the DD Form 375c has not been received within a reasonable period of time (normally 30 days), the ACO should initiate followup action as he deems appropriate. However, followups should not be initiated solely for the purpose of reducing CAO monthly deliquency statistics.

(2) When the initial followup (see subparagraph (1) above) does not result in a reply to the DD Form 375c, the following will apply:

(a) If failure to receive a reply significantly impacts on the contractor's performance, e.g., Government decision needed on correct specifications, lack of supply support, the ACO will escalate the problem to higher management levels.

(b) Where failure to receive a reply could seriously affect the Government's right of termination, an additional followup will be made (normally by TWX or telephone).

(c) In all other cases, additional followup will not be initiated.

d. *Revising Delivery Schedules*

(1) In developing a supportable basis for determining equitable adjustments for extensions of deliveries, consideration must be given to such factors as:

(a) The impact on the Government resulting from the delinquency.

(b) The length of extension desired.

(c) The contract price of the delinquent work or items.

(2) In addition, factors to be considered in ascertaining the damage, if any, to the Government may include the following:

(a) Costs to the Government in delaying work under related contracts.

(b) Costs to the Government in providing alternate facilities or services until performance under the delayed contract is effected.

(c) Costs to the Government in monitoring and administering the delayed contract.

(3) Some of the information needed to evaluate the above factors may be available only to the PCO. Hence, if authority is delegated to the ACO pursuant to FAR 42.302(b)(3) to negotiate consideration and execute a supplemental agreement, all pertinent information which would have a bearing on the amount of consideration negotiated should be made available to the ACO. Thus, in situations where the ACO is informed that the delegation is forthcoming, the ACO's recommendations for extensions of delivery schedules should include a request for all such information which may be available.

(4) If the purchasing activity customarily utilizes a formula to compute equitable adjustment of prices, the ACO should consider utilizing the same formula and negotiate on the same basis as the PCO. This would preclude criticism of the methods used and results obtained by the ACO. If such information is not already available for use in connection with delegations of authority previously issued by PCOs, it should be obtained prior to the initiation of any action by the ACO to extend the delivery schedule.

e. *DD Form 375-2, Delay in Delivery (Flash Notice).* The DD Form 375-2 or electronically transmitted Revised Delivery Forecast (RDF) is intended to serve as an expeditious means for notifying both PCOs and ACOs when an actual delinquency occurs or a potential delinquency develops. The DD Form 375-2 is prepared, distributed and mailed by the assigned IS/E/CMA, and is not intended to substitute for a contractually required DD Form 375.

(1) *Part A Contracts.* DD Form 375-2 is sent to the ACO to fill out the action recommended statement. The ACO keeps a copy for the contract file and returns the remainder of the 5-part form to the Production element for distribution.

(2) *Part B Contracts.* DD Form 375-2 is not prepared for anticipated delays of 30 days or less. ACOs do not need to coordinate on production reports involving unilateral purchase orders, but are provided with a file copy. Bilateral contracts in Part B are treated the same as bilateral contracts in Part A, i.e., the ACO fills out the action recommended statement and the Production element distributes per paragraph e.(1) above.

* Note: Electronically transmitted Revised Delivery Forecasts (RDFs) serve the same purpose as the DD Form 375-2. The ACO coordination is also transmitted electronically.

f. *DCASPRO Procedures.* Production Progress Reporting procedures within DCASPROs and some residencies with full time Production personnel may vary from those specified in DLAM 8300.1, Paragraph 3-107, depending on local circumstances (see DLAM 8300.1, Section 7-100). This would not normally affect procedures followed by the ACO. If it should, the ACO must be sure that the requirements of FAR 42.11 are followed.

g. *Strikes.* In the case of strikes, the ILRO will provide initial and monthly updates of the strike situation. When the strike ends, the Production element will provide the ACO the extent of excusable delay. Revised delivery forecasts and substantive recommendations of action to be taken will be transmitted through the ACO to the PCO.

42.11-4 Request for PCO Action

When it is desired to solicit PCO response to the DD Form 375, a check list in letter format providing information as follows can accompany the forwarding of the DD Form 375 to the PCO:

Please indicate the action you intend to take for the attached DD Form 375 dated ______.

☐ PCO Authorizes the ACO to negotiate extension of the delivery for valid consideration.

☐ PCO authorizes ACO to issue show cause/cure notice.

☐ PCO will terminate contract for: ☐ default, ☐ convenience.

☐ Other action as follows:

42.12 NOVATION AND CHANGE OF NAME AGREEMENTS

42.12-1 References

a. FAR 42.12, Novation and Change of Name Agreements.

b. DFARS 42.12, subject as above.

c. DAR 26-400, subject as above.

42.12-2 Definitions

a. A novation agreement involves the Government recognition of a third party as a successor in interest in the transfer of Government contracts. It is important to note that simultaneously with the transfer of contracts between the two or more contracting entities, there must be a transfer of all of the assets of a contractor or such part of his assets involved in the performance of the applicable contract. Pursuant to Comptroller General Decision B-171959, dated 3 September 1971, offers or bids which have not been accepted or awarded shall not be included in novation agreements except when the transfers or assignment is by operation of law, i.e., approved by a court.

b. A change of name agreement involves only a contracting entity change of name, with no accompanying change of assets from one contracting entity to another.

42.12-3 General

a. The transfer of Government contracts between contracting entities is prohibited by law (41 USC 15). However, the Government may recognize a third party as the successor in interest to a Government contract where the third party's interest arises out of the transfer of all the assets of the contractor, or all that part of the contractor's assets involved in the performance of the contract. The responsibility for execution of novation agreements and change of name agreements for DoD and NASA contracts is assigned to the cognizant ACO.

b. During the interim period between legal recognition of the new corporate entity and Government execution of the novation or change of name agreement, a valid contract continues to exist between the Government and the original contractor (transferor). Therefore, if the Government continues to receive all goods and services required under the contracts, and if payment can be made to the transferor, there is no problem. Complications arise when cost audits, redeterminations, and contract modifications are required. The Government has no basis, prior to execution of a novation agreement, to deal with the transferee, and the transferor is usually not in a position to provide the information, authority or signatures required for the above mentioned events. Therefore, these actions cannot be accomplished until a novation agreement is executed.

c. The need for timely and complete processing of novation and change of name agreements is essential. ACOs charged with the responsibility of developing and executing novation agreements shall perform these functions on a priority basis.

42.12-4 Procedures

a. *Advance Notice.* The advance notices of novation agreements shall be distributed in accordance with DFARS 42.1203. It should be noted that no advance notices are required for change of name agreements. The notice shall include a statement advising addressees that the ACO will construe the absence of comments within 30 days after receipt of the notice as approval by that addressee. Only formal letters, rather than any type of electrically transmitted message, will be used to notify the various addressee of proposed novation agreements.

b. *Distribution of Agreements.* Executed novation agreements or change of name agreements will be distributed in accordance with FAR 42.1203(e) and (f) and DFARS 42.1203(e)(70) and (71).

c. *Preparation and Distribution of Contract Modifications.* FAR 42.1203(f) provides that after execution and distribution of the change of name or novation agreement, an administrative change (SF 30) shall be prepared by the cognizant ACO (FAR 42.1202) incorporating a summary of the agreement and attaching thereto a complete list of contracts affected. Two copies of the SF 30 with a list of the contracts affected will be distributed to the appropriate addressee(s) in accordance with FAR 42.1203(f) and DFARS 42.1203(e)(70), (e)(71), and (f). Modifications to contracts assigned to contract administration services for administration will be numbered in accordance with DFARS 4.70. Modifications to contracts and purchase orders not assigned to contract administration services for administration will be numbered "A00001." Block 8 of the SF 30 should be completed with the name of the transferor, i.e., the original contractor. Since the SF 30 in this instance is being used as an administrative change, the SF 30 is signed only by the contracting officer and is not signed by either contractor. When the ACO responsible for the corporate office is the cognizant ACO, one copy of the SF 30, with a complete list of the contracts affected, will be distributed to each CAO responsible for contract administration at a plant or division. That CAO will, in turn, reproduce and distribute copies for each of its affected contracts.

d. *Change in Office of Administration.* If the novation or change of name agreement involves a change in the office of administration and/or payment as contemplated by FAR 42.206, the SF 30 recognizing the novation or change of name should also change the office of administration and/or payment.

42.12-5 Debarred, Suspended and Ineligible Firms and Individuals. The ACO will not agree to nor execute a novation agreement or a change of name agreement with a Transferor, Transferee, Contractor or other party who has been (i) debarred or suspended by any Federal executive agency, (ii) proposed for debarment by any DoD component, or (iii) recommended for debarment or suspension by the DCASR (during the period that the recommendation is under consideration by the activity to which it was referred), prior to notifying the Region Counsel and obtaining advice as to the propriety of the proposed action. In all such instances involving novation or change of name actions the ACO shall promptly report the matter to the Region Counsel, by the most expeditious means available.

42.13 CONTRACTOR ACQUISITION OF AUTOMATIC DATA PROCESSING EQUIPMENT (ADPE)

42.13-1 References

a. DFARS 70.6, Acquisition of ADPE by DoD Contractors.

b. FAR 31.205.2, Automatic Data Processing Equipment (ADPE) Leasing Costs.

c. DFARS 70.3, Automatic Data Processing (ADP) Contracting.

d. DAR 3-1100, subject as above.

e. DAR 15-205.48, Automatic Data Processing Equipment (ADPE) Leasing Costs.

f. DAR 4-1100, Automatic Data Processing (ADP) Contracting.

42.13-2 General

a. Industry practice concerning the leasing and purchase of ADPE poses unusual problems of CA in determining the reasonableness of contractor ADPE requirements and the associated costs being charged to Government contracts. The procedures contained herein apply to contractor acquisition by purchasing or lease of all ADPE, as defined in DFARS 70.3, except as components of end items to be delivered to the Government.

b. The costs of acquisition of ADPE by contractors should be reviewed by the ACO under the criteria contained in FAR 31.2. In the case of purchase, no particular cost principles have been established for ADPE; therefore, the general principles of FAR 31.2 are applicable. With regard to lease costs, FAR 31.205-2 applies.

(1) *Annual Demonstration.* DFARS 70.6 and FAR 31.205-2 require an annual demonstration by the contractor and review by the Government irrespective of whether the term of the lease was renewed or otherwise extended by the contractor. In comparing the relative costs of leasing ADPE as opposed to purchase, the analysis will reflect any charges to the Government which would be occasioned by the necessity for cancellation of the existing lease.

(2) *Advance Understandings.* Advance understandings pursuant to DFARS 70.6 should not exceed 1 year. The rationale for this is as follows: DFARS 70.6 provides for an advance understanding (agreement) after the initial review, after each annual review, and after review of any proposed lease of a new system or major change. In addition FAR 31.205-2 requires the contractor to annually demonstrate that the costs of leasing ADPE are "reasonable and necessary for the conduct of business in light of such factors as . . ."

(3) *Change in Useful Life/Residual Value.* The useful life and residual value accepted in connection with a previous review is subject to further review and analysis during subsequent reviews. When the contractor seeks to justify a change in the previously accepted useful life and/or residual value of the equipment, the requested change should be evaluated on its merits. Satisfaction of the criteria in FAR 31.205-2 should be a prerequisite to approval of any requested shortening of the established useful life.

42.13-3 ADPE Review/Approval Categories

a. PCO Review/Approval of proposed contractor ADPE acquisitions in accordance with DFARS 70.600(b) and (c) (PCO will obtain Senior ADPE Policy Official approval).

b. ACO review of the Contractor's system in accordance with DFARS 70.600(d) and 70.603(a) (1).

c. ACO review and advance determination of reasonableness of proposed contractor ADPE leases in accordance with DFARS 70.600(d), 70.603(a) (2), and FAR 31.205-2(b) (2) (iii).

d. ACO review to determine if the contractor's costs for leasing ADPE are allowable in accordance with FAR 31.205-2.

42.13-4 Responsibilities

a. *The contractor* is responsible for the development and submission of the documentation to support the applicable review/approval requirements in paragraph 42.13-3 above.

b. *The ACO* should advise the contractor in writing that it is subject to the provisions of DFAR 70.6 and FAR 31.205-2. The ACO is responsible for obtaining the contractor's documentation cited in subparagraph a above, and taking the appropriate action described in paragraph 42.13-5 below. Normally, ADPE which requires approval of the senior ADPE Policy Official is evident from the "package" itself. However, identification of the other review/approval requirements are more difficult not only because the information may not be included in the "package" but because the contractor frequently does not request review/approval until required to do so.

(1) In most cases, the contract auditor can furnish the ACO the total ADPE leasing costs identified to the types of contracts involved. In some cases, it may be necessary or expedient for the ACO to request this information from the contractor. Upon receipt of the ADPE technical review, the ACO will discuss any recommendations that need clarification with the ADPE review team members.

(2) As appropriate, the ACO should issue a "Notice of Intent to Disallow or Not Recognize Costs" (see part 42.801) or direct DCAA to issue a

DCAA Form 1 for suspension or disallowance of costs. If the notice issued by the ACO is for indirect costs it should be coordinated with the auditor.

c. *The Financial Services element* is responsible for coordinating and accumulating the results of the review by local functional elements and DCAA if such assistance is requested by the DCAS ADP Technical Assistance Team. This includes furnishing the local functional elements concerned and DCAA with the applicable portions of the contractor's submission related to their function, and receiving, and combining, where applicable, their evaluations. When the ACO initiates a "Notice of Intent to Disallow or Not Recognize Costs" from the result of an ADPE review, prepare the documentation for the ACO's position to disallow the costs.

d. *The Contract Auditor* will be asked to verify General Business Information and Statistics (42.13-6 part C) such as total sales and accounting treatment of ADPE costs.

e. *The ADP Technical Assistance Team* will, when requested, normally review the contractor's technical evaluation which supports the source selection. They will answer such questions as:

(1) Does the contractor really need the equipment?

(2) Has contractor justified the useful life of the ADPE, by components (applicable life, technological life or physical life as defined in FAR 31.205-2?

(3) Has contractor supported the estimate of residual value of the ADPE?

f. When requested, the ADPE review team will provide the ACO assistance in developing final decisions relative to the ADPE team's findings. The ACO's final decision should be documented in a memorandum, a copy of which should be forwarded to the ADPE Review Team. The ACO should also provide the ADPE Review Team with any correspondence furnished the contractor.

g. ADPE Review Team Members will prepare a case file which includes well-indexed workpapers to support their review findings, conclusions, and recommendations. After the field work is completed copies of each team member's report will be provided to the ADPE Team Chief along with the case file. The ADPE Team Chief will evaluate all inputs from review team members and prepare a comprehensive report to the ACO. The ADPE Team Chief will consolidate all workpapers received from review team members in a well-indexed case file for retention in a central file.

h. The Chief, Contractor ADP Evaluation Division is responsible for:

(1) Preparing and maintaining an annual schedule of ADPE Reviews to be performed and providing a copy of such schedule to HQ DLA, ATTN: DLA-AFP.

(2) Reviewing and approving all ADPE Review reports.

(3) Reviewing and assuring that the workpapers and workpaper files are well-indexed, complete and supportive of ADPE Review findings, conclusions and recommendations.

(4) Assuring adequate training of ADPE Review Team Members.

42.13-5 Procedures

a. *Review of ADPE Acquisition Requests Requiring PCO Approval (see paragraph 42.13-3a).* In processing such requests, the contractor's proposal to purchase or lease ADPE will be addressed to the PCO of predominant interest, and forwarded through the ACO. Normally, the documentation should follow the outline in DFARS 70.6. The PCO is responsible for obtaining the approval of the senior ADPE Policy Official and the ASD (Comptroller) where required, and arranging for the ADPE technical review. The ACO's responsibility normally consists of reviewing the "package" for completeness and making any recommendations considered appropriate based on the ACO's overall knowledge of the company. Although the PCO arranges for the ADP technical review, limited DCAS technical review may be made to assist in developing the necessary documentation for presentation to the PCO.

b. *ACO Review/Approval When Leasing Costs at Contractor Cost Center Exceeds $500,000 and 50 Percent or More of the Total Cost is Allocated to Contracts Requiring the Negotiation or Determination of Costs.* Upon identification of a contractor meeting the criteria for initial and annual reviews of leased ADPE (paragraph 42.13-3b), the ACO will notify the contractor of its responsibilities for compliance and the need for documentation. A guide as to the type of data necessary to accomplish an initial or annual review is contained in paragraph 42.13-6, DFARS 70.6 and FAR 31.205-2.

(1) The ACO should establish a suspense for the receipt of the contractor's documentation for the initial review and for annual review of lease costs on each identified contractor.

(2) Upon receipt of the contractor's documentation, the ACO will request assistance in accordance with the procedure set forth in subparagraph d(2) below.

(3) The head of the DCAS ADP Technical Assistance Team will be in charge of the actual review at the contractor's plant, and will arrange through the local CAO for support from the price/cost analyst, contract auditor, and other functional elements as necessary.

(4) Upon completion of initial and annual review of leased ADPE, and ACO should consider executing an advance agreement with the contractor as evi-

dence of the reasonableness of the requirement and related costs. The agreement should specify that any changes to existing ADPE exceeding $100,000 in annual lease costs or any proposed lease of a new system, are to be submitted to the ACO for prior approval.

c. *Other ACO Review/Approval.* A procedure similar to that described in subparagraph b above should be used.

d. *ADP Technical Assistance*

(1) As stated in subparagraph a above, technical reviews for ADPE acquisition requiring senior ADPE policy official approval are arranged by the department concerned. DCAS ADP technical assistance is available for contractors who met the criteria of over $500,000 and 50 percent or more allocated to Government contracts requiring the negotiation or determination of costs. However, the ACO may request ADP technical assistance in accordance with the procedure contained in subparagraph b(2) even though the above criteria are not met.

(2) DCASR Boston will perform ADP technical reviews in accordance with DoD Federal Acquisition Regulation Supplement (DFARS) 70.603 for contractors located in DCASRs Atlanta, Boston, Chicago, Cleveland, New York and Philadelphia. DCASR Los Angeles; is responsible for performing ADP technical reviews for contractors located in DCASRs Dallas, Los Angeles, and St. Louis. Any assistance will be requested in writing directly from DCASR Boston, ATTN: DCASR BOS-AA; or DCASR Los Angeles, ATTN: DCASR LA-AA. The request shall state whether the contractor is expected to exceed the DFARS 70.603(a) threshold, i.e., "the total cost of leasing computer equipment at a contractor's plant, division, or cost center is expected to exceed $500,000 in any 12-month period and more than 50% is to be allocated to Government contracts requiring the negotiation or determination of costs." A suggested date (e.g., March 1987, or 1st Quarter Calendar Year 1987) may be indicated if desired.

(3) When contractor ADP reviews are performed on multidivision contractors where contract administration services cognizance is divided, the corporate headquarters should be reviewed first by the review activity (DCASR Boston or Los Angeles) that has responsibility for the region in which the corporate headquarters is located, e.g., if the corporate headquarters is located in DCASR Chicago then DCASR Boston reviews it. Subsequently, each division or plant is reviewed by the review activity that has responsibility for the region in which the division or plant is located. These subsequent reviews examine the implementation of the corporate policies, procedures, and plans at the division or plant level. To the maximum extent practical, the team reviewing the corporate headquarters should include individuals responsible for review of the divisions or plants of the corporation, e.g., if the corporate headquarters is in DCASR Boston and the divisions of that corporation which will require review are the DCASR Los Angeles, then the team reviewing the corporate headquarters should include DCASR Los Angeles *and* DCASR Boston employees. A corporate headquarters review will not be performed if the cognizant review activity (DCASR Boston or Los Angeles) determines it is not necessary, e.g., corporate headquarters does not develop ADP policies, procedures, or plans. Unnecessary division and plant reviews should also be avoided. Coordination of all review efforts is required to avoid overlap and duplication, and to ensure that the review is properly tailored to encompass the overall corporate system.

e. *Utilization of ADPE*

(1) Where the ADPE costs charged to Government contracts are significant ($50,000 annually), and utilization has not been reviewed during the year, the ACO should require a check of the utilization of ADPE leased and/or owned by the contractor to determine capacity versus requirement. Technical assistance should be obtained through Financial Services (to include production and contract audit, and others as needed), in evaluating contractor's utilization records. Where excess capacity is discovered, two actions should be initiated by the ACO. First, a determination should be made whether costs charged to the Government contracts are reasonable in accordance with FAR 31.201-3. Second, a determination must be made whether the leased ADPE should be reported as excess by the contractor pursuant to FAR 45.680-5(d) (see subparagraph f below).

(2) Utilization of Government-owned ADPE should also be checked. Where there is significant excess capacity, consideration should be given to adding work presently accomplished by other ADPE, and/or reporting the Government-owned ADPE as excess in accordance with FAR 45.608-5(d) (see subparagraph f below).

f. *Reporting of Excess ADPE.* Excess ADPE which is Government-owned or leased by the contractor under terms which provide to the Government an option to purchase or other residual interests (including the right to use until expiration of the lease) will be reported by the contractor to the plant clearance officer utilizing SF 1428, Inventory Schedule B. The plant clearance officer will forward the SF 1428 to HQ DLA ATTN: DARO, utilizing Standard Form 120, Report of Excess Personal Property, as a cover sheet. Prompt reporting of excess ADPE is essential to enable the Government to exercise any option available to purchase and/or otherwise utilize the equipment. The ACO is responsible for expeding the contractor's report of excess ADPE. In this connection, suspense dates should be established for the lease or option expiration date. In many instances, these dates can be obtained as a result of the reviews described in subparagraphs a and b above.

42.13-6 FORMAT OF DOCUMENTATION FOR INITIAL AND RECURRING REVIEWS OF CONTRACTOR ADPE

A. General. State name and address of contractor or corporation. Indicate total annual ADPE leasing costs. Furnish breakdown of leasing costs by plant, division or cost center. Indicate amount of the total (dollars or percent) charged to cost reimbursement type contracts.

B. Information for ADPE Acquisitions and Performance

1. *Inventory.* For each computer system:
   a. Identify each computer component and unit record equipment.
   b. Identify each punched card machine.
   c. Give location.
   d. Furnish installation date.
   e. Give type of ownership (leased including name of lessor, purchased, Government furnished, lease back).

2. *Usage.* Indicate monthly usage for each computer system and punched card machine for the past 12 months. Monthly hours of computer usage should include:
   a. Productive use
      (1) Pure production.
      (2) Extra shift.
      (3) Development of programs and program maintenance.
      (4) Chargeable lost time (rerun time due to operator error, program error).
   b. Nonproductive
      (1) Setup.
      (2) Idle.
      (3) Preventive maintenance.
      (4) Remedial maintenance.
      (5) Other.

3. *Application Data*
   a. Name and brief description of each data system being supplied to computers.
   b. Computer time for each use.
   c. Related contract or task involved.

4. *Acquisition Data*
   a. Documentation supporting and justifying need for new ADPE or a change (specific objectives or requirements, generally in the form of a data system study, and data system specifications).
   b. Description of standards, and methods used in making selections.

5. Lease versus Purchase Comparison (DFARS 70.6).
6. Equipment Selection-Competitive (DFARS 70.6).
7. Equipment Selection-Noncompetitive (DFARS 70.6).

C. General Business Information and Statistics

1. *Total Sales* (including prior year and projection for 2 following years).
2. *Distribution of Sales (current year.)*
   a. Customer (Air Force, Army, and Navy).
   b. Contract Type (Cost Reimbursement Type, Fixed Price, Fixed Incentive, Commercial).
3. *Dollar Value of Government Contracts*
   a. Customers.
   b. Expiration Dates.
4. *Accounting Treatment of ADPE Costs*
   a. Direct Charge to specific contracts. (Identify specific computer systems.)
   b. Indirect Charge. (Identify each computer system being completely charged to cost reimbursement contracts.)

(NOTE: The ADP Technical Assistance Team may request additional or different documentation for a particular review.)

42.14 CONTRACTOR AUTOMATIC DATA PROCESSING (ADP) SOFTWARE COSTS

42.14-1 References

a. FAR 31.205-11, Depreciation.

b. CAS 409, Depreciation of Tangible Capital Assets

42.14-2 General

a. The use of complex computer programs (software) is becoming increasingly common in the management and operation of a business. New computer applications development for internal use by businesses varies from relatively simple accounting systems to "Factory of the Future" integrated management systems. The cost of buying or creating these programs can be substantial. At contractors with significant amounts of noncompetitive negotiated contracts, ACOs must ensure that costs allocated to the Government are reasonable in amount, and that the Government receives a benefit in relation to the costs it is paying for such internal contractor computer projects.

42.14-3 Procedures

a. ACOs should consider advance agreements with contractors for development/acquisition of business software when the ACO becomes aware of contractor plans for significant computer projects. The main purpose of the advance agreement would be to negotiate a ceiling on the amount of Government reimbursed costs for each software project. Computer software costs should be capitalized and depreciated in accordance with FAR 31.205-11 and CAS 409 when the projects have beneficial lives of several years, benefit other contracts, and involve significant dollars. In instances where agreement with the contractor is not possible, the ACO should issue an appropriate Notice of Intent to Not Recognize or Disallow Costs.

b. The DCASR Boston and Los Angeles ADP Review Teams (DCASR BOS-AA and DCASR LA-AA) are available to discuss issues and concerns before establishment of advance agreements. ACOs should request the involvement of PCOs in the development of advance agreements which will have a major impact on their contracts. In addition, ACOs should request the Financial Services element to ensure that technical evaluation of contractor proposed computer software projects are performed.

43 CONTRACT MODIFICATIONS, GENERAL

43-1 Reference

a. FAR 43, Contract Modifications.

b. DFARS 43, Contract Modifications.

c. DAR 26-100, Contract Modifications.

43-2 General

a. When authorized by the PCO and in accordance with the terms of the contract and applicable directives, the ACO will be responsible for issuing (not originating) modifications, and negotiating and executing supplemental agreements. "Originate" includes such actions as selecting a contractor to perform a service or produce an item, determining place and time of delivery, and providing funds. "Issue" includes such actions as preparing, validating, and distributing instructions to the contractor to perform, as authorized and "originated" by the PCO.

b. Maintenance of a manually prepared or computerized control register by the DCAS office will be mandatory in every instance when modifications as defined in FAR 43.101 are to be definitized by the ACO. Excluded from the requirement for a control register are such actions as administrative changes, amended shipping instructions, and unilateral actions taken under the provisions of a contract clause, e.g., economic price adjustments. DLA Forms 1514, 1515 and 1516 (Provisioned Items Order Register, Change Order Control Register and Unpriced Order Control Register) or computerized equivalent will be used as applicable. The precise format of other registers required for control purposes is at the discretion of each region.

c. In addition to the control registers mentioned above, use of a contract modification index may be appropriate based on number of modifications issued or anticipated. For example, if only one modification is made during the life of the contract, the use of an index may not be practical. If you decide use of a contract modification index is appropriate, DLA Form 1611, Contract Modification Index, shall be used and it is to be filed on top of the basic contract in part 1. (Use of similar purpose forms is authorized until existing stocks are exhausted.)

d. ACOs are cautioned that close coordination with the PCO is required when definitizing change orders issued under incentive contracts because of the potential impact on the target price/cost, profit, or fee.

e. In the event proposed contract changes are received from the PCO or the contractor involving non-ACO assigned contracts (see part 90.15), the Head of the Contracts element will request COF to assign an ACO. ECPs received from contractors whose contracts are under support administration and where an ACO has not been assigned, e.g., Quality Assurance only, will be transmitted directly to the PCO by the functional element receiving the proposal (see paragraph 43.2-6 and DLAM 8200.1, paragraph 7-105).

f. Execution and distribution of contract modifications will be accomplished in accordance with FAR and DFARS 4.2 and special distribution instructions set forth in or accompanying the contract. Only one original will be prepared and executed; all other copies required for distribution will be reproduced from the single signed original. The ACO will ensure that a copy of the contract modification marked "DD Form 350 Reporting Copy" is distributed in accordance with DFARS 4.671-4(e) to the purchasing office if the contract modification is of a value in excess of $25,000. If the modification is of a value of $25,000 or less, a copy of the contract modification marked "DD Form 1057 Reporting Copy" will be distributed to the purchasing office in accordance with DFARS 4.672-2(g)(1). The Standard Form 30 must be filled in completely and include all the required available information. In this connection, the procurement request or purchase request number/initiator is essential information for purchasing and requiring activities and, when shown in the contract, should similarly be shown on all applicable ACO initiated SF 30s.

g. Contract modifications are subject to the provisions in 90.019 governing audit follow-up. ACOs should review requirements related to resolution of findings issued by DCAA prior to definitizing contract modifications when total costs questioned are $500,000 or more and differences between the ACO and the DCAA auditor amount to at least 5 percent of the total questioned, qualified or unsupported costs and/or adverse opinion amounts.

43-3 Numbering of Contract Modifications. Numbers for contract modifications executed by the ACO will be assigned in accordance with DFARS 4.7004-3 except for those contracts numbered in accordance with procedures in effect prior to 1 July 1966. In these latter situations, the ACO will contact the procuring activity and obtain the next sequential contract modification number from the PCO or instructions for developing a local number in accordance with the purchasing office's procedures.

43-4 Nonreceipt of Contractor's Claims

a. If no claim has been received within the period specified by the Changes clause of the contract, the ACO will give the contractor written notice as outlined in subparagraphs (1) and (2) below, whichever is applicable.

(1) If analysis of the change order indicates possible decrease in contract price/cost, the ACO

will advise the contractor that: "Evaluation of Change Order No. ______ indicates that it may result in a reduction in contract price/cost. In accordance with the terms of the Changes clause of this contract, it is requested that your proposal for an equitable adjustment be submitted to reach the undersigned by ______ (date)."

(2) In cases other than those set forth in subparagraph (1) above, in order to expedite the close-out of contracts and to ensure that contractors are not encouraged to submit claims, the ACO will advise the contractor that: "As no claim for an equitable adjustment has been received within the time specified by the contract in connection with Change Order No. ______ it is concluded that you intend to perform as required by the change order without adjustment to the established delivery schedule or in price/cost to the Government."

b. Where the supplemental agreement will be executed by the PCO, the following statement will be added to the advice in subparagraph a(2) above: "If we do not hear from you to the contrary within 15 days, this office will recommend to the PCO that a supplemental agreement be prepared incorporating the subject change at no cost and with no change in delivery schedule. Should you submit a claim for equitable adjustment within the 15-day period, your claim will be analyzed and forwarded to the PCO for consideration."

c. When the authority to definitize a change order has been delegated to the ACO, a no-cost supplemental agreement will be prepared and enclosed with the letter required by subparagraph a(2) above. The following should be added to the body of the letter. "Accordingly, a supplemental agreement is enclosed for your signature. Please return this agreement immediately upon execution."

43.103 SUPPLEMENTAL AGREEMENTS

43.103-1 References

a. FAR 43 Contract Modifications.

b. FAR 53.301-3, Standard Form 30, Amendment of Solicitation/Modification of Contract

c. DAR 26 Part 3, Supplemental Agreements.

43.103-2 General

a. ACOs are authorized by FAR 42.302(a) to negotiate prices and execute supplemental agreements related to spare parts and Cost Accounting Standards clause adjustments. In addition, when authorized by the PCO, the ACO may negotiate and execute supplemental agreements for many other contract actions including, but not limited to, definitization of change orders under the changes clause, negotiated overhead rates, and acceleration or deceleration of delivery schedules. (See Part 43-2 for general requirements relating to supplemental agreements and Part 47.3-2 for procedures relative to ASIs). Negotiations will be conducted by the ACO, who may require assistance from other DCAS office technical specialists such as the engineer, price/cost analyst, and packaging specialist, as well as the contract auditor.

b. The ACO executing a supplemental agreement is also responsible for the complete preparation and distribution of that document. In the event it is necessary to include any special provisions or unusual clauses in the supplemental agreement, the basis therefor will be included in the PNM or, in the absence of a PNM, an accompanying narrative justification to be attached to the official contract file copy of the supplemental agreement.

c. When a clause, which is other than a standard clause prescribed by DAR or the FAR, is to be incorporated into the supplemental agreement, the DCASR Counsel should be requested by the ACO to assist in the preparation of such clause and concur in the supplemental agreement for legal sufficiency prior to forwarding to the contractor for signature.

d. Prior to execution for the Government, the ACO will obtain the recommendation of the Board of Review, if required by Part 90.16 (see 90.01 for audit followup requirements).

e. The revision of contract delivery schedules will be accomplished in accordance with subparagraph 42.11-3d.

f. Supplemental agreements for the acceptance of Type II nonconforming supplies will be processed in accordance with paragraph 46.407-5.

g. ACOs are reminded that block number 13C on Standard Form 30 will be checked and the pertinent contract clause or other authority will be entered in the blank space.

43.103-3 Changes in Line Item Quantity, Delivery Schedule, and Appropriation Data. When supplemental agreements are issued, it is essential that the change or impact on the line item quantity, the accounting and appropriation data and the delivery schedule for each item affected be included in the modification. Unit prices will be adjusted only when specifically requested by the PCO. The omission of these data impacts adversely on purchasing, financial and inventory management activities, often necessitating additional communications between these activities and ACOs.

43.103-4 Obligation and Deobligation of Funds

a. When supplemental agreements are issued and funds are obligated by the document, the net amount being obligated by the action, as well as the accounting and appropriation data, should be shown in block 12 of the SF 30. When appropriate, indicate the impact of the modification on each affected accounting classification by inserting one of the following entries:

(1) Accounting classification________
Net Increase $________

(2) Accounting classification________
Net Decrease $________

b. Procedures for committing/obligating funds may vary among the Departments/Agencies for which DCAS is assigned contract administration responsibility. Some Departmental funding activities require identification of the original committing/obligating document in order to maintain their records; therefore, the ACO, when drafting a supplemental agreement, shall include within the description block of the SF 30, or continuation thereof, sufficient information so as to relate this action to the document which provided the funds, e.g., change order and data, ACD and so forth.

43.103-5 Navy Blanket Delegation to Negotiate and Execute Supplement Agreements

a. The Office of the Assistant Secretary of the Navy, Shipbuilding and Logistics (ASN(S&L)) has provided a blanket delegation of authority for DCAS ACOs to negotiate and execute supplemental agreements incorporating contractor proposals resulting from change orders issued under the changes clause of Navy contracts. However, this delegation does not apply:

(1) to letter contracts;

(2) when the equitable adjustment affects any contract provision other than price except for changes in delivery schedule or contract warranties specifically authorized by the PCO.

(3) when, in individual cases, a letter accompanying the contract or the contract itself withholds such delegation.

b. If negotiations introduce factors that indicate the change order should be modified, the ACO should return the change order with comments and recommendations.

43.2 CHANGE ORDERS

43.2-1 References

a. FAR 52.243, Changes Clauses.

b. DFARS 52.243-7000, Engineering Change Proposals.

c. FAR 43.2, Changes Orders.

d. DFARS 43.2, Changes Orders.

e. DAR 7-103.2, Changes Clause.

f. DAR 7-104.89, Engineering Change Proposal Clause.

g. DAR section XXVI, part 2, subject as above.

43.2-2 Changes Originated by the Purchasing Office. The PCO will issue the change order or he may request the ACO to perform this function for him. Change orders will be accompanied with a fund citation, if necessary, for the estimated dollar value of the change. The ACO will analyze the contractor's claim for adjustment submitted as a result of the change order. If the authority is delegated, the ACO will request the PCO to provide all information necessary for definitization, final negotiation, and execution of the supplemental agreement resulting from the change (see paragraph 43.103-5 for Navy blanket delegation). In all cases where this authority is delegated, the ACO will assure that sufficient funds, identified by specific accounting data, are committed prior to execution of the supplemental agreement. Contractor claims, which require price/cost analyses, will be submitted to the Financial Service element for review and evaluation (see Part 15.8). Contractor claims which require analyses for other than price/cost, will be forwarded to the appropriate DCAS element for such analysis. When the PCO so directs, contractor equitable adjustments which result from a partial convenience termination will be referred to the TCO for processing. In the event that modification of the prime contract has resulted in the partial or complete termination of subcontracts, action will be taken in accordance with DLAM 8110.1, Termination Manual, and FAR 8. See 90.16 for contract audit followup requirements pertaining to audit reports issued on contract change orders where the ACO has definitization or negotiation authority.

43.2-3 Changes Proposed by the Contractor. All change proposals initiated by the contractor will be referred to the PCO for guidance and processing instructions prior to any review or evaluation by the DCAS office. These change proposals will be processed as follows:

a. When the PCO so requests, the contractor will simultaneously forward one copy of the proposal directly to the purchasing office with the original and additional copies to the ACO for complete technical review and recommendation.

b. When the contractor has forwarded all copies of the proposal to the purchasing office, the extent of the review will depend upon the PCO's instructions at the time he forwards copies to the ACO.

c. When the proposal has been received by the DCAS office, without the knowledge of the PCO, the ACO will immediately communicate with the purchasing office to determine the extent of review which the PCO requires.

d. The contractor's proposal must include information relative to the impact of the change on production schedules, support equipment and documentation, as well as sufficient price/cost data to permit a preliminary evaluation. The PCO will determine the acceptability of the change and advise the ACO. If rejected, the PCO will advise the contractor and the ACO. If accepted, the PCO will issue the change order or request the ACO to issue the change order. The proposal will then be processed in accordance with paragraph 43.2-2.

43.2-4 Optional Change Originated by the Purchasing Office. Issuance of this type of change, e.g., EOs, usually is dependent upon cost. Accordingly, upon request from the PCO, the ACO must first determine, by discussion with the contractor, the estimated cost of implementing the change. If this estimated cost is within the amount of funds already furnished by the PCO, the FCO, or the ACO when delegated, will issue the change order, or if agreement with the contractor is reached, a supplemental agreement. If additional funds are required and not furnished by the PCO, the proposal must be referred back to the PCO for the necessary funds and approval. If approved by the PCO, he will either issue a supplemental agreement or request the ACO to do so.

43.2-5 No Cost Change Orders. When considered appropriate by the PCO, change orders may include the statement that they will be effected by the contractor at no change in contract price/cost. The ACO will obtain the contractor's written acceptance of such changes prior to issuing the change order and shall reference the contractor's letter in the change order. If the contractor will not accept the change without an adjustment in contract price/cost or the ACO determines that a price/cost reduction is warranted, he will secure a proposal from the contractor and forward it with his evaluation, comments and recommendations to the PCO. When delegated by the PCO, the ACO may negotiate the equitable adjustment and execute a supplemental agreement.

43.2-6 Engineering Change Proposals (ECPs)

a. *Class I ECPs*. Class I ECPs initiated by the contractor will be processed by the Quality Assurance element through the Production element to the ACO. An information copy of the QA transmittal will be provided the ACO. The ACO, upon receipt of the required technical evaluations, analyses, and recommendation, will forward them to the PCO (see DLAM 8200.1, and DLAM 8300.1).

b. *Class II ECPs*

(1) Where approval authority is not delegated to the CAO, the QAR will forward the Class II ECP to the ACO with his recommendation. The ACO will forward the ECP to the PCO with the appropriate comments to support the recommendation.

(2) Where approval authority is delegated to the CAO, the QAR will review the Class II ECP and provide his approval or disapproval to the PCO via the DD Form 1998, Comments on Waiver, Deviation or Engineering Change Request. The QAR will provide the official contract file with a copy of his action.

43.2-7 Time Frames for Definitization of Change Orders

a. DCAS offices will establish procedures (to include the use of DLA Form 1515 or a computerized equivalent) which will enable management personnel to closely monitor the status of undefinitized change orders. The procedures should provide the data required for the MIR, RCS DLA(M) 448(F-(C)MIN).

b. The following milestones are suggested for monitoring undefinitized change orders. Information for the MIR is indicated by an asterisk (*).

(1) Obtain claim for equitable adjustment from contractor, 60 days from receipt of change order.

*(2) For change orders to be definitized by the PCO, forward review and evaluation to PCO 150 days from receipt of change order.

(3) For change orders to be definitized by the ACO, complete review and evaluation 105 days from the receipt of change order.

(4) Complete negotiation 150 days from receipt of change order. If the ACO has been delegated negotiation authority only, forward negotiation memorandum to PCO for execution of supplemental agreement.

*(5) For change orders to be negotiated and definitized by the ACO, execute and distribute contract modification (supplemental agreement) 180 days from receipt of change order.

43.2-8 Change Definitized by ACO Involving Obsolete or Excess Inventory

a. The changes clause provides that where the cost of property made obsolete or excess as a result of a change is included in the contractor's claim for adjustment, the contracting officer shall have the right to prescribe the manner of disposition of such property. The instructions to contractors for preparation at change order proposals, contained in FAR table 15-3 (FAR 15-804-6), require the contractor to attach a detailed inventory of work, materials, parts, components and hardware already purchased, manufactured, or performed and deleted by the change, indicating the cost and proposed disposition of each line item, and, if the contractor desires to retain such items or any portion thereof, the amount offered therefor.

b. When authority to definitize a change order is delegated to the CAO, the ACO in negotiating a price increase or decrease shall give consideration to the fair value of the excess or obsolete inventory. In the price review and evaluation of a change, the opinion of a plant clearance officer shall be solicited when an appraisal of fair value is desired.

c. Referral of inventory schedules to the plant clearance element for processing pursuant to FAR 45.6, shall be limited to change order pricing proposals involving excess serviceable inventory for which a fair value consideration cannot be achieved by negotiation. Any proceeds of sales which may accrue shall be processed by the plant clearance officer in accordance with FAR 45.610-3.

d. In cases where plant clearance action is required, receipt of SF 1424, Inventory Disposal Report, shall precede contract closeout action by the ACO.

e. The modification definitizing the change order shall indicate whether title to excess or obsolete inventory vests in the contractor or in the Government in accordance with the terms of the agreement.

f. If subcontract settlements are involved, TCO review and approval are required.

43.2-9 Requirement for EEO clearances. If the ACO is requested to issue a change order, the ACO shall obtain OFCCP clearance prior to issuing the change order, if it is expected to increase the contract price by $1 million or more, or if it is expected to increase the aggregate value of the contract to $1 million or more.

44.2 CONSENT TO SUBCONTRACTS

44.2-1 References

a. FAR 44.2, Consent to Subcontracts.

b. DFARS 44.2, Consent to Subcontracts.

44.2-2 General. Prime contractors are responsible for selection of subcontractors. However, the ACO will have the authority to consent to the placement of subcontracts as provided for in the contract. The ACO will have the responsibility for obtaining and coordinating recommendations from audit, pricing, and other specialized personnel. Where a contractor's purchasing system has been approved, the ACO, in the case of fixed-price subcontracts, need not consent to subcontracts within the scope of that approval and relevant FAR provisions. In all cases when the proposed subcontract will be for an estimated or actual amount of $1,000,000 or more and the PCO has not already done so, the ACO will request the Office of Federal Contracts Compliance Programs (OFCCP) Regional Office where the work is to be performed to furnish a Certificate of Clearance in accordance with FAR 22.805 prior to consenting to the placement of the subcontract. This applies even though a contractor's purchasing system has been approved.

44.2-3 Procedures

a. *Review of Subcontracts.* Except for those fixed-price subcontracts where the need for review has been eliminated through approval of the contractor's purchasing system, the ACO will be responsible for consenting to the placement of subcontracts pursuant to contract provisions. However, for major weapons systems contracts, FAR 52.244-2(d) does require ACO consent to the placement of proposed cost-reimbursement, time-and-materials or labor-hour subcontracts. For proposed fixed-price subcontracts, in accordance with FAR 52.244-2(a)(2), consent shall be obtained when the proposed subcontract exceeds "either $25,000 or 5 percent of the total estimated cost of this contract", whichever results in the greater of the two amounts. Consent is not required if the proposed fixed-price subcontract is more than $25,000 but less than 5 percent of the total estimated cost of the contract. In arriving at a determination, the ACO will obtain recommendations from the various specialists concerned within the DCASR, DCASMA or DCASPRO such as an evaluation of Special Test Equipment by the Production Division in accordance with DLAM 8300.1, Part 5-700. The contractor's notification, prior to placement of certain subcontracts, will be in writing and, when pertinent will include:

(1) Number of sources solicited.

(2) Number of quotations received.

(3) Data on prices previously paid for the same or substantially similar items.

(4) Written justification for selection of bidder.

(5) Written justification for placing award on the basis of one quotation.

(6) Copy of cost breakdown received.

(7) Extent of review and evaluation of cost breakdown.

(8) A statement whether the award deviates from the make-or-buy structure as set forth in the contract.

(9) Copy of engineering estimates prepared.

(10) Type of subcontract.

(11) Copy of Certificate of Current Cost or Pricing Data, in accordance with FAR 15.804-4, from subcontractors to the effect that all cost or pricing data have been considered by the subcontractor in preparing its proposal and that such data are current and have been provided the contractor.

b. *Advance Notification.* Special attention is invited to FAR 44.201 concerning the advance notification requirements by the contractor to the contracting officer which provide for, when appropriate, the following information: a description of the supplies or services; name of subcontractor, why selected and degree of competition; proposed price and cost or price analysis thereof; when required, current complete and accurate cost or pricing data together with the certificate; and the type of subcontract. Upon receipt of the advance notification the ACO will review it for compliance with the subcontract clause, perform a review similar to that provided for when consenting to a subcontract and retain it in the file for future reference.

c. *Consent to Subcontracts.* Subcontract consent by the ACO is accomplished in accordance with the requirements of FAR 44.202. DLA Form 1672, Apr. 81, Consent to Subcontracts Checklist, is provided for optional use by the ACO in performing the consent action. It highlights some of the more important actions to be taken during the subcontract review. When used, the form will be completed by the ACO to document the accomplishment of the review and made a part of the official contract file. The use of the form does not relieve the ACO of compliance with all the provisions of FAR 44.202. The written notice to the contractor should identify the subcontract, advise the contractor of the ACO's consent or refusal, be signed by the ACO and dated. In the case of refusal, the justification will be stated. The notice in the case of consent may be in the form of a stamp, a form letter, or may be printed or typed by the contractors in their letter of transmittal. It should include a statement that the notice is not a determination of the allowability or acceptability of the costs, does not authorize the contractor to exceed the maximum costs permitted to be incurred under the contract, and that the consent is subject to the clauses contained in the prime contract. If the subcontract is directly chargeable to a prime contract and involves acquisition or rental of ADPE, the notice should also include a statement that the contract is subject to the requirements of DFARS part 70 and FAR 31.205-2. An example of a written notice is as follows:

"Consent is hereby given to the placement of subject proposed subcontract or purchase order, subject to the clauses contained in the prime contract and conditioned upon the information furnished by the contractor in support thereof. This consent shall in no way relieve the prime contractor of any obligations or responsibilities it may otherwise have under the contract or under law, shall neither create any obligation of the Government to, nor privity of contract with, the subcontractor or vendor, and shall be without prejudice to any right or claim of the Government under the prime contract. This consent does not constitute a determination as to the acceptability of the subcontract price or the allowability of costs."

d. *Ineligibility for Award.* The determination to consent to the placement of subcontracts, in addition to the requirement outlined in FAR 44.201, will also take into consideration the following:

(1) The ACO will be responsible for screening the Joint Consolidated List of Firms and Individuals Debarred, Declared Ineligible or Suspended and the GSA Consolidated List of Current Administrative Debarments by Executive Agencies (GSA List) to determine if the proposed subcontractor is listed. When a listed firm is proposed as a subcontractor, the ACO should decline to consent to the subcontract and advise the contractor, in writing, that the proposed subcontractor is listed on the Joint Consolidated List: or GSA List. The reason for the firm being listed will not be divulged to the contractor. However, if the ACO considers that the placement of the subcontract with the listed firm is in the best interest of the Government, he may make such a recommendation to the PCO provided the reason for debarment is not based on a statutory violation.

(2) Contractors Determined Ineligible by the Director, Office of Federal Contracts Compliance Program (OFCCP). The Director, OFCCP, will notify the departmental labor advisor of contractors determined to be ineligible. The departmental labor advisor (DLA-AP) will notify the DCASR Directorate of Contract Management who will then notify the ACO of the names of ineligible contractors. When requested to consent to proposed contracts to firms determined ineligible by the Director, OFCCP, ACOs should refer to DAR 1-603.

e. *Public Law 87-653, Truth in Negotiations.* ACOs will refuse consent to purchase orders and subcontracts requiring submission of certified cost or pricing data under the conditions described in Public Law 87-653 and FAR 15.804-2 unless such data are obtained. Data submitted must include incurred and estimated costs by specific cost elements and supporting information suitable for detailed review and analysis on SF 1411, FAR 53.215-2(A) or comparable format. ACOs, themselves will also ensure that where the requirements of FAR 15.804-2 apply, the Certificate of Current Cost or Pricing Data is obtained in the format described in FAR 15.804-4. Where FAR 15.804-2 does not apply, the contractor's file will document the reason therefor. Contractor compliance with the requirements described above will be verified also in review of purchase orders and subcontracts submitted for advance notification. In addition, the appropriate clauses contained in FAR 52.214-27, 52.215-22, 52.215-23, 52.214-26, 52.215-2, 52.214-24, 52.215-25, will be included in the subcontract.

f. *Defective Subcontract Pricing.* Whenever there is an indication that a possibility exists of defective subcontract pricing, the ACO will request immediately a postaward audit by DCAA. Notwithstanding the provisions of FAR 15.804-7(c), which requires coordination with the PCO in defective pricing matters, the ACO has the total responsibility in the area of subcontracts, and coordination with the PCO, at this point, is not required. However, if the resulting postaward audit reveals defective pricing, the ACO will coordinate, where applicable, with the PCO to determine the actions required to reduce the prime contract price.

g. *Improper/Restrictive Clauses.* ACOs will withhold consent to individual subcontracts or purchase orders which contain an improper/restrictive clause, limiting the Government's contractual rights or otherwise acting to restrain subcontractors from selling directly to the Government. ACOs will notify the contractor that consent to affected subcontracts or purchase orders will be withheld until the improper/restrictive clauses are withdrawn or modified in such a way as to remove the restrictions in relation to the Government's rights. The PCO will be notified if the withholding of consent could affect performance under the contract.

h. *Special Purchases.* Contractor's requests for services or supplies outside the terms of the contract will be evaluated and forwarded to the PCO with appropriate recommendations. It is emphasized that while the ACO has the authority to process requests and approve purchases by the contractor under various clauses (subcontract, Government property, and special tooling), under no condition is he authorized to purchase supplies or services for the contractor.

i. *Prime Contract Clauses Related to Subcontracting.* Prior to consenting to subcontracts the ACO will give appropriate consideration to FAR 44.202. In addition, the ACO should ensure that the subcontract has been placed in accordance with the prime contract clause and provisions related thereto including flow-down requirements. In this regard the following listed clauses are examples of those to be reviewed and should not be considered all-inclusive:

(1) Competition in Subcontracting.

(2) Buy American Act.

(3) Price Reduction for Defective Cost or Pricing Data.

(4) Subcontracting Cost or Pricing Data.

(5) Changes to Make or Buy Program.

(6) Preference for Certain Domestic Commodities.

(7) Required Source for Jewel Bearings.

(8) Special Test Equipment/Special Tooling.

(9) Government Surplus.

(10) Use of Government Property.

(11) Small Business, Small Disadvantaged Business Concerns, Labor Surplus Area and Women-Owned Business Concerns.

(12) Duty Free Entry.

(13) Equal Opportunity.

(14) Stabilization of prices.

(15) Limitation on Payments (for incentive price revision or price redetermination subcontracts).

44.3 CONTRACTOR PURCHASING SYSTEM REVIEWS (CPSR)

44.3-1 References

a. FAR 44, Subcontracting Policies and Procedures.

b. DFARS 44, Subcontracting Policies and Procedures.

c. DAR Section XXIII, Subcontracting Policies and Procedures, Part I.

d. DFARS Supplement No. 1, Guide for Conducting CPSR.

e. DLAM 8105.1, Subpart 23-100, Contractor Purchasing System Review (CPSR).

44.3-2 General

a. CPSRs are performed to determine that the systems and practices used by selected contractors provide maximum protection to the Government and conform with public law, FAR, contract clauses and efficient and effective industrial purchasing practices. A CPSR includes an analysis of the company history, purchasing organization, management of purchasing, purchasing policies and procedures, subcontract clauses, development of purchase requirements, source selection including determination of financial capability, cost/price analysis, expediting procedures, receiving methods and subcontract award and administration. The term "contractor," as used in this part, means a separate entity of the contractor, such as an affiliate, division, or plant, which performs its own purchasing.

b. CPSRs will be accomplished in accordance with FAR 44.3, DFARS 44.3 DARS section XXIII, part 1; DFARS supplement No. 1; and DLA guidance including use of DLA Form 604, Purchase Order and Subcontract Analysis.

c. During the in-plant review period, the CPSR team will ensure the contractor's top management understand the DoD policy that prime contractors bear full responsibility for the goods and services provided by their subcontractors and vendors. The CPSR team should review prime contractors' purchasing systems with the intent of emphasizing needed improvement in subcontractor competition, as well as improved subcontractor negotiations. The presence of a Government review activity in a subcontractor's plant does not in any way relieve the prime contractor of its responsibility for insuring subcontrators and vendors comply with their contractual obligations.

44.3-3 Review Criteria

a. *Initial Review.* An initial review shall be made of a contractor's purchasing system when his annual sales to the Government on negotiated prime contracts and negotiated subcontracts issued under another contractor's prime Government contracts are expected to exceed $10,000,000. In addition, annual sales on modifications to competitively awarded Government prime contracts should be included in arriving at the $10,000,000 threshold. There is no one source for obtaining data to determine whether a contractor meets the $10,000,000 threshold. Some suggested sources that may be useful are: DCAA prior year overhead allocation records; CAR report; Quality Assurance reports; ACOs; PCOs; Small business reports; and the contractor.

b. *Subsequent Review.* These reviews will be accomplished every 2 years after an initial review that results in an approved system providing the contractor meets the dollar criteria of subparagraph a above.

c. *Surveillance Review.* These reviews will be performed between initial and/or subsequent reviews that resulted in approval of a contractor's purchasing system.

d. *Followup Review.* This review is performed to evaluate a contractor's correction of the deficiencies which were the basis for the ACO's withdrawing or withholding a contractor's purchasing system approval.

e. *Special Review.* The ACO may initiate or authorize a special review any time during the period a contractor's purchasing system is approved.

44.3-4 Responsibilities

a. *Chief, Contractor Systems Review Branch*

(1) Maintain a register of CPSRs, DLA Form 1321, Financial Services Systems Review Register.

(2) Prepare and maintain a schedule of CPSRs to be performed during the next 12 months.

(3) Review and approve all CPSR reports.

(4) Review and assure that work papers and files are complete and supportive of the findings, conclusions and recommendations in the CPSR report.

(5) Distribute reports in accordance with paragraph 43.3-10.

(6) Assure adequate training of PSAs.

(7) Maintain the DLA CPSR data base in the time-shared computer. The data base should be updated monthly as of the date for the DLA 448 management report.

b. *CPSR Team Captain.* The CPSR team captain will be a senior PSA and is responsible for the overall review including the summary of responsibilities in DFARS supplement No. 1, paragraph S1-201(b). In addition, the team captain will have the following responsibilities:

(1) Develop the review schedule.

(2) Submit the CPSR report through the Chief, Contractor Systems Review Branch and the Chief, Financial Services Division to the Contract Management Review Board or ACO as required.

(3) Develop and maintain a system of indexing, filing, and cross-referencing documentation and work papers to support the review findings, conclusions, and recommendations.

(4) Prepare the documentation for the ACO's position to disallow the costs when an ACO initiates a "Notice of Intent to Disallow or Not Recognize Costs" from the result of a CPSR.

c. *ACO.* In addition to the responsibilities listed in DFARS supplement No. 1, paragraph S1-201(a), included are the following:

(1) Assure that contractors qualifying for a CPSR are included in the program.

(2) Issue a letter to the contractor granting, continuing, withholding or withdrawing approval of the contractor's purchasing system together with a copy of the complete report.

(3) In accordance with FAR 44.305.-2(b), consent to certain subcontracts or classes of subcontracts may be required in exceptional circumstances, even though the contractor's purchasing system has been approved. This may result from recommendations of weaknesses/deficiencies in the technical areas, i.e., engineering, quality, production and may be the basis of such action where certain subcontractors, vendors or suppliers have a history of quality and technical deficiencies.

(4) Provide the Chief, Contractor Systems DLAM 8105.1 Review Branch, a copy of the letter to the contractor advising the contractor of the purchasing system status.

(5) Followup with the contractor to assure timely implementation of CPSR recommendations.

(6) As appropriate, the ACO should issue a "Notice of Intent to Disallow or Not Recognize Costs" (see part 42.801) or direct DCAA to issue a DCAA Form 1 for suspension or disallowance of costs. If the notice issued by the ACO is for indirect costs it should be coordinated with the auditor.

44.3-5 CPSR Review Board. CPSR reports will be submitted to the Contract Management Board of Review in accordance with paragraph 90.16-5a(3). A copy of the board minutes will be filed in the CPSR file. If the CPSR team agrees with the board's recommendations, they should incorporate any recommended changes into the report; however, if there is a disagreement, the disagreement will be documented and forwarded with the board minutes to the ACO for consideration and final decision.

44.3-6 Scheduling

a. *Initial and Subsequent CPSRs.* DFARS No. 1 has a guide for completion of a CPSR in 55 calendar days from the first day in-plant to distribution of the report. This schedule is predicated on three PSAs in-plant for 3 weeks or 9 workweeks with the draft report completed prior to departing the plant. In an effort to achieve the 55 day goal the following procedures are recommended:

(1) Total in-plant effort including the exit conference should not exceed an average of 2 weeks with the CPSR report to be written at the DCASR location.

(2) At the exit conference the team's recommendations to the contractor, approved and signed by the ACO, should be given to the contractor including a request for the contractor to respond to the recommendation within 15 calendar days.

(3) CPSR reports requiring Board of Review should be scheduled so that the Board comments are available to the PSA at the same time the contractor's response to the team recommendations is available.

(4) After receipt of the contractor's response to the recommendations, the PSA should complete the report (excluding recommendations to the Government) and submit two copies to the ACO with a cover letter incorporating any recommendations to the Government. Issuance of the CPSR report to the ACO should be considered completion of the effort required in the aforementioned 55-day goal.

(5) The ACO should promptly review the CPSR team's report with recommendations and make a final decision regarding system status (e.g., granting, continuing, withholding, or withdrawing approval) and forward one copy of the report with a cover letter advising the contractor of the status of the purchasing system. Concurrently, the ACO should provide the PSA with a copy of the transmittal letter to the contractor together with a distribution list of PCOs.

(6) The PSA should incorporate the ACO's letter in or attach it to the report and make distribution of the report and the recommendations within the Government (see paragraph 44.4-10).

b. *Surveillance Reviews.* Surveillance reviews should be less extensive and take less in-plant time than subsequent reviews. Normally surveillance reviews will be conducted by a PSA; however, in exceptional situations, determined by the ACO, the ACO and the local team (i.e., price analyst, engineer, etc.) may perform the review.

c. *Followup Reviews.* Normally a followup review would be accomplished 3 months after notification from the contractor that corrective action has been implemented so that there would be sufficient data available to test the implementation. However, if the followup review date is more than 9 months from the ACO's letter to the contractor withholding or withdrawing system approval, a subsequent review in lieu of a followup review should be performed.

d. Subsequent and surveillance CPSRs should be scheduled so as to provide to the ACO information on the contractor's purchasing system prior to expiration of an existing approval.

of the team that may affect the comments from the SADBU Specialist will be provided to the SADBU Specialist for review and evaluation. The following letter format is recommended for obtaining data and information from the SADBU Specialist:

SUBJECT: Contractor Purchasing System Review (CPSR); Contractor Name and Location)
TO: Small and Disadvantaged Business Utilization Specialists

1. An (initial) (subsequent) (surveillance) CPSR is scheduled to be conducted at the subject contractor commencing (Date).

2. You are requested to provide the following information to the CPSR Team Captain for inclusion in the CPSR report by (Date).

a. Date of the Small and Disadvantaged Business Utilization Specialists' survey of the Contractor's subcontracting plans__________

b. Summary of contractor's purchasing activity:

	Prior Year	Current Year
Total Purchasing and Subcontracting		
Small Business		
Small Disadvantaged Business Concerns		

The dollars reported for small disadvantaged business concerns are also included in the small business figure.

c. Provide a narrative comment on the overall adequacy of the contractor's implementation in each of the following areas:

Small Business
Small Disadvantaged Business
Labor Surplus

d. If the small and disadvantaged business utilization specialist considers the contractor's efforts inadequate in any of the three areas, provide narrative comments to explain why it is considered inadequate.

3. The requested information may be provided by completing the spaces on this request and signing in the space provided below.

____
CPSR Team Chief (Date)

____
Small and Disadvantaged Business
Utilization Specialist (Date)

Any recommendation by the SADBU Specialist of unsatisfactory must be supported in writing prior to the exit meeting with the contractor and will be considered as a major recommendation. A major recommendation concerning the small and disadvantaged business plans will not by themselves result in disapproval of a contractor's purchasing system but will be considered with other recommendations that collectively could result in withdrawing approval of the contractor's purchasing system. The importance of utilizing small, disadvantaged and labor surplus area concerns, as required under the subject program, will be emphasized by the CPSR review team at the exit conference

c. *Surveillance Reviews.*

(1) Tentative surveillance plans will be formulated by the PSA and forwarded to the cognizant ACO for final development and coordination with the cognizant DCAA auditor. Upon completion of the ACO's and auditor's efforts, a copy of the approved plan will be returned to the supervisory PSA for necessary scheduling. If the ACO decides that the local field team will perform the surveillance review the PSA will be so advised. The surveillance review shall be of sufficient depth to assure that the contractor's purchasing system is continuing to be effectively managed. The surveillance plan will be in the following format:

INTRODUCTION

Contractor's name and address.

Purpose of the review.

Date of last subsequent review.

Suggested participation of functional disciplines

PRIOR RECOMMENDATIONS—Contractor's response for corrective actions to the recommendations made by the ACO as a result of the prior initial or subsequent review.

Review the implementation of prior recommendations including adequate tests of the contractor's implementation.

Review and comment on procurement policies and procedures issued since the last subsequent review.

Review of significant areas related to the procurement function. The following is a suggested list of potential areas for review:

Compliance with P.L. 87-653, "Truth in Negotiations."

Compliance with P.L. 91-379, "Cost Accounting Standards."

Compliance with 10 U.S. Code 2306, "Advance Notification."

Source selection including adequacy of price competition and single sole-source procurements.

Interdivisional transactions.

Management's attitude and control of the procurement function.

Solicitation of proposals including preaward surveys and determination of vendor responsibility.

Adequacy of price/cost analysis.

Any significant deficiencies that were discovered during the course of other reviews which may be applicable to the subject contractor. Periodic followup on CPSRs should be made to verify improvement in subcontractor competition and subcontractor negotiations.

Review of selected purchase orders and subcontracts to reveal patterns and trends. The number of purchase orders and subcontracts reviewed should be sufficient to validate the findings; however, the sample size need not be as large as for an initial or subsequent review.

(2) Although there is no requirement to enclose statistical information in the surveillance report, pertinent statistical data should be summarized and retained in the work papers. The applicable sections of the format in DFARS No. 1, pages S1:77 through S1:82 should be followed for summarizing statistical data.

d. *Followup Reviews.* These reviews should be of sufficient depth to assure that the contractor has effectively implemented correction of deficiencies previously noted.

44.3-8 Recommendations

a. *Major/Minor Recommendations.* A major recommendation is one that will reduce actual contract costs, encourage cost consciousness, stimulate competition, improve purchasing effectiveness, or that relates to compliance with public law and contract clauses. In some cases a major recommendation may be considered to be of such critical nature, and the deficiencies found so serious, such as failure to comply with Public Law 87-653, as to demand immediate remedial action on the contractor's part. A minor recommendation is one that improves the purchasing operation but does not significantly affect the expenditure of DoD funds, or does not relate to compliance with the prime contract. Minor recommendations when taken collectively or repeat minor recommendations may constitute a major recommendation warranting withholding or withdrawing system approval.

b. *Advance Notification and Consent.* 10 U.S. Code 2306(e) and FAR subcontract clauses state that each cost contract and each cost-plus a fixed-fee contract shall provide for notice to the ACO by the contractor before making an award under the prime contract, of a CPFF or a fixed-price subcontract or purchase order involving more than $25,000 or 5% of the estimated cost of the prime contract. This notice must be made prior to award. Approval of the contractor's purchasing system will not be granted where it is found that the contractor is consistently not in compliance with the notification requirements of 10 U.S. Code 2306(e) and the applicable FAR clauses and requirements for the various types of contracts. However, isolated instances of noncompliance not condoned by contractor management should not be a cause for withdrawing or withholding system approval.

c. *Public Law 87-653 As Amended, Truth in Negotiations.* Approval of a prime contractor's purchasing system will not be granted unless the purchasing policies and procedures and practices result in obtaining cost or pricing data, certification thereof, and detailed analysis of the data. Data submitted must include incurred and estimated costs on SF 1411 or SF 1412, Claim for Exemption from Submission of Certified Cost or Pricing Data, or comparable format suitable for detailed review and analysis. Where the requirements of FAR 15-804 apply, the Certificate of Current Cost or Pricing Data must be obtained in the form described in FAR 15-804.4 and purchase orders and subcontracts must include the appropriate clauses described in FAR 52-214.27, FAR 52.215.22, FAR 52-215.23, FAR 52-214.26, FAR 52-215.2, and FAR 52-215.24, FAR 52-215.25, and FAR 52-214.28. When FAR 15-804 does not apply, the rationale as to why it does not apply will be documented in the contractor's file. When the contractor is not in compliance with the public law, approval will be withheld. Isolated instances of noncompliance not condoned by management should not be cause for withholding approval of a contractor's system.

d. *Public Law 91-379, Cost Accounting Standards (CAS.)* Approval of a contractor's purchasing system will not be granted in cases where the contractor fails to obtain from his subcontractors a disclosure statement, certificate of concurrence of prior filing, certificate that a disclosure statement is not required, or certificate of exemption, or fails to include the flow down clauses in CAS covered subcontracts. Isolated instances of noncompliance not condoned by management should not be the basis for withholding approval of the contractor's purchasing system.

e. *Improper Restrictive Clauses.* Approval of a contractor's purchasing system will not be granted in those cases where the prime contractor's subcontract and purchase order terms and conditions contain improper/restrictive clauses, which limit the Government's contractual rights or otherwise restrain subcontractors from selling directly to the Government.

44.3-9 CPSR Reports

a. *Initial or Subsequent Review Reports.* A complete report will be prepared in the format set forth in DFARS No. 1 with the following modifications:

(1) Until the supply of preprinted DLA report covers is exhausted, the following words will be included on the foreword page: "'Distribution of this report shall be made only in accordance with FAR 44-307. Release of this report is governed under the Freedom of Information Act, 5 U.S.C. 552. Should release of this report be made, notification of action taken will be provided to Headquarters ———————. The supporting work papers applicable to this report are retained in the files of ———————."

(2) Recommendations to the Government will not be included in the report but will be submitted to the ACO as an enclosure when the report is transmitted to the ACO.

b. *Surveillance Reports.* These reports will be dated when issued to the ACO and in the following format:

INTRODUCTION

Contractor's name and address.

Last subsequent report.

Purpose of the review.

Review team members.

Summary of purchases examined.

RECOMMENDATIONS

Status of prior recommendations. (Identify recommendations and current status of corrective action.)

Current recommendations to the contractor.

Contractor's response to current recommendations, together with team evaluation.

Recommendations to the Government.

EFFECTIVENESS IN MAJOR PROCUREMENT AREAS

Comment on the significant areas selected for review in the surveillance plan. There is no requirement to attach statistical data; however, pertinent statistical data should be summarized in the narrative comments on each significant area reviewed.

CONCLUSIONS

c. To ensure that opportunities for subcontractor kickbacks are minimized the following steps are added to the CPSR program and require specific comments in all initial and subsequent CPSR reports:

(1) Does the Contractor have a published standards of conduct or business ethics policy which is made known to each buyer?

(2) Are purchases over $25,000 subject to approval by higher management before the transaction is finalized?

(3) Are buyers' purchasing assignments rotated periodically?

(4) Does the contractor have a procedure/practice of having another management element, e.g., internal auditors, check with subcontractors and vendors as to whether they have noted any irregularities or questionable conduct in dealing with the contractor's buyers?

(5) Does the contractor have a mechanism like information "Hotline" where employees or subcontractors can report in confidence possible wrongdoing that has been observed to someone outside the purchasing chain?

(6) Does the contractor report the unethical conduct to the Government and provide restitution for any increased gain?

d. The above steps are intended to improve contractors' awareness of subcontractor kickbacks and to provide safeguards for monitoring and controlling subcontractor kickbacks. CPSRs should address whether or not contractors have these policies, procedures and controls in the "Conflict of Interest" paragraph of the report. Lack of these procedures should not be a basis for withdrawing or withholding approval of the contractor's purchasing system. However, when considered with other minor recommendations, the absence of these procedures could warrant withdrawing or withholding system approval.

e. Issues or elements of cost may be questioned subsequent to a review, therefore all CPSR reports shall include the following statement in the Foreward immediately following Recommendation to the ACO:

> "THE GOVERNMENT IS NOT PRECLUDED FROM QUESTIONING ISSUES OR COST WITHIN THE SYSTEM REVIEWED, NOTWITHSTANDING THE STATUS OF THE CONTRACTOR'S SYSTEM OR THE RESULTS OF THIS REVIEW."

The above statement shall also be included in all letters prepared for ACOs to the contractor conveying the results of the review.

44.3-10 Distribution of Reports

a. Initial and subsequent review reports. The Chief, Contractor System Review Branch, will distribute two copies of the report to the cognizant ACO. The ACO will submit one copy of the report to the contractor with the letter identifying the approval status of the contractor's purchasing system. A copy of the ACO's letter to the contractor will be submitted to the Chief, Contractor Systems Review Branch. The Chief, Contractor Systems Review Branch will distribute the report with the ACO's letter to the CACO, ACOs of other divisions of the contractor, the cognizant DCAA auditor, HQ DLA-AFS, and others as designated by the ACO. Attach to the HQ DLA-AFS copy a copy of the Board of Review minutes if applicable.

b. Surveillance, follow-up and special review reports will be submitted to the ACO. Upon receipt of the ACO's letter to the contractor, forward a copy of the letter and the report to HQ DLA, ATTN: DLA-AFS. No further distribution of these reports will be made *unless* the conclusions result in a change in the contractor's purchasing system approved status. If the approval status changes, the ACO will provide the contractor a copy of the report (less recommendations to the Government) along with a letter informing the contractor of the purchasing system status. Concurrently, the ACO will furnish the PSA a copy of the letter to the contractor for distribution with the reports. These latter reports will receive the same distribution as an initial or subsequent review report.

c. If the ACO's local team performs the surveillance review a copy of the report will be submitted to the supervisory PSA through the Chief, Contractor System Review Branch at the Regional office.

44.3-11 Granting, Continuing, Withholding or Withdrawing Approval. The ACO should make an annual determination as to the approval status of a contractor's purchasing system based on either a subsequent or surveillance review. A contractor's purchasing system approval will expire at the end of 1 year. However, it is not the intent of the Government, through no fault of the contractor, to unnecessarily interrupt continuance of a purchasing system approval. Therefore, the ACO may in writing extend the approval of a contractor's purchasing system for an additional 90 days. Further extensions by the ACO will require written approval by the Regional Director of Contract Management. If the contractor's purchasing system approval has been withheld or withdrawn, the contractor will remain in the CPSR program until the purchasing system has been approved, regardless of whether the contractor meets the CPSR criteria.

44.3-12 Preaward Survey. When a purchasing office requests a preaward survey or proposal analysis, the Financial Services element will be responsible for reporting as appropriate on the purchasing system. To facilitate completion of SF 1403, and SF 1405 Section X by the Preaward Monitor, and Chief, Contractor Systems Review Branch, will, on a quarterly basis, compile a schedule of contractors included in the CPSR program to coincide with the issuance of the MIR, RCS DLA(M) 448(C) MIN. The CPSR time-sharing computer listing for the cognizant Region should be used to provide the contractor's name and approval status and should be distributed to all preaward monitors and supervisory cost/price analysts within the Region.

44.3-13 Requests for CPSRs from Military Departments and Other Government Agencies

a. CPSR reports on contractors under DLA cognizance that meet the criteria for a CPSR will be provided to any Government PCOs upon request at no cost to the recipient.

b. Requests from Military Departments for CPSRs on contractors assigned DLA cognizance but do not meet the criteria for a CPSR will be accomplished at no cost to the Military Departments; however, other Government agencies will be charged for productive hours if they request the review.

c. Requests for CPSRs of contractors not assigned DLA cognizance will be accomplished at the discretion of the Region based on availability of personnel. Any reviews performed for the Military Services will be contingent on their paying travel and per diem costs. Other Government agencies will be charged for man-hours but not for travel and per diem.

44.3-14 Savings/Cost Avoidance Reporting. Improved contractor efficiency and effectiveness in the procurement area can lead to substantial savings/cost avoidance. The savings/cost avoidance are generally reported to contractor management by the purchasing department and will be reported in the CPSR report under section "CPSR Statistical Report on Purchasing." PSAs should review and determine that there is reasonable supporting documentation for savings reported by contractors.

15.3 FACILITIES LEASES

15.3-1 Reference. DLAM 8300.1, Production Manual for Contract Administration Services, section 5-200 and 5-400.

15.3-2 Scope. This procedure covers the administration of facilities leases which provide existing Government-owned plant equipment to the contractor for the production or development of material and services.

15.3-3 General

a. The ACO is responsible for assuring full compliance with the provisions of facilities leases. He will be assisted in the discharge of his overall responsibility by the same Government specialists who are normally available to him in the administration of other contracts.

b. The purchasing officer (lessor) is responsible for making the following determinations prior to the issuance of any lease:

(1) Eligibility of proposed lessee.

(2) Essentiality of making the lease.

(3) Availability of the property.

(4) Impracticability or inappropriateness of use of a facilities contract. The DCAS office may be requested to furnish the lessor information and documentation which can be used as the basis for making determination in the "Eligibility and Essentiality" areas.

c. Normally, the DCAS office cognizant of the plant in which the leased facilities are to be physically located will receive requests from contractors to negotiate a lease or add items to an existing lease. In some instances, the PCO will receive a lease request direct from the contractor and will usually forward the request to the ACO for evaluation. Requests for leases should contain or be supported by the following information:

(1) A list, including the standard commodity code numbers, description, and the acquisition cost of the items desired to be leases, as well as those items currently under lease, if applicable.

(2) A description of the purpose for which the lease is desired including:

(a) Identification of any Government prime contracts for which a substantial quantity of work is to be done with the leased property.

(b) A list of subcontract or purchase orders to be performed showing identification of the components or end items to be produced.

(c) Estimated duration of the proposed requirement for the leased items.

(d) Percentage of capacity at which the leased items are expected to be used for defense production, i.e. the expected degree of utilization.

(e) Evidence of the lessee's financial stability.

(f) The details of any planned utilization of the leased equipment in the performance of work for any element of the DoD other than that of the lessor.

(g) A statement whether or not the lessee has in existence or in negotiation a facilities contract or lease with another service and if so, the details relative thereto.

(h) The number of additional employees to be hired as a result of the use of the property to be leased.

(i) A certification that the proposed lessee has not employed or retained a company or person to solicit or secure the desired contract on a contingent fee basis, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business.

(j) A certificate from the prime contractor, when the proposed lessee is a subcontractor and is being sponsored by a Government prime contractor, attesting to the efforts made by the prime contractor to obtain other sources for the supply items or components to be manufactured which would not require the leasing of Government property.

(k) A certificate that the proposed lessee is unable or unwilling to furnish the plant equipment at his expense in lieu of a lease. Justification must indicate specific reasons.

15.3-4 Procedures for Processing Requests for New Leases or Additions to Existing Leases

a. Upon receipt, either direct from contractor or through the PCO, of a request to negotiate or renew a lease or add items to an existing lease, an ACO will be designated to review the request for completeness and will request assistance from the Production, Financial Services, and Industrial Property Management elements as follows.

(1) The Production element will evaluate the request and will perform a survey to assess the justification and necessity for the facilities lease.

(2) The Financial Services element will furnish information concerning the company's financial qualifications. A proposed lessee is deemed qualified financially if he has sufficient funds available to indicate ability to satisfactorily complete the supply contract or subcontract involved, to pay the rental and to perform other obligations imposed by the terms of the proposed lease.

(3) The Industrial Property Management Element will provide such information as is already available in their files which relate to their prior experience with the proposed lessee. The informa-

tion may have been developed as a result of a preaward survey or if the proposed lessee had prior contracts which may have required compliance with FAR 45.5.

b. The ACO should determine from the proposed lessee and include in his comments to the PCO that the proposed lessee can reasonably expect to be able to hire any required additional employees without interfering with other defense production in the area; and he is unable to obtain the needed items of machinery or equipment through any existing lease or facility contract.

c. Except for Air Force facilities lease agreements, a contractor's request for a new facilities lease agreement will be submitted together with the ACO recommendations to the PCO responsible for the associated supplies and/or services contract(s). Contractor requests for facilities lease agreements in support of Air Force programs will be submitted to Headquarters ASD/PPR, Wright Patterson AFB, Ohio 45433.

45.3-5 Procedures for Administering Leases. While there are certain ACO actions peculiar to the administration of leases, the procedures for the receipt, assignment and administration of other type of contracts generally are applicable to leases. Several of the more significant areas of ACO responsibility are discussed in detail below:

a. *Repairs and Parts Replacement.* When the costs of repairs and parts replacements for leased property will be borne by the lessee according to the terms of the lease, title to the parts removed passes to the lessee at the time of replacement. The lessee's responsibility for the leased property will be satisfied when the leased property is returned to the Government providing the parts replaced by the lessee have the same utility value and are of a quality equal to or better than the original parts. All parts installed on the equipment become the property of the Government and must be returned in good operable condition, fair wear and tear excepted, with the equipment. Accessory items, auxiliary items, and other items not included in the design function and which are not furnished by the Government will remain the property of the contractor (i.e., motors, power takeoffs, special tooling). The final determination in any specific case as to whether the lessee is meeting his obligations is the responsibility of the ACO.

b. *Maintenance.* The PA is the authorized representative of the ACO for administering all the contract requirements to Government property. As such, the PA is the approval authority for the contractor's facilities maintenance program. Technical assistance in the initial evaluation and periodic surveillance of the contractor's maintenance program is rendered to the PA by the QAR. When it is ascertained that the contractor's maintenance program is inadequate, the PA will request the lessee to correct the deficiencies. Should the lessee fail to take prompt corrective action or fail to make the adjustments required to protect the interests of the Government, the ACO should be informed so corrective action may be initiated.

c. *Rent.* Lease agreements vary as to designation of the office to which rental payments will be made.

(1) Some leases provide for payment of rent directly by the lessee to the lessor. In those cases, the monitoring and enforcing of the rental obligation is not a responsibility of the ACO. Nevertheless, the lessor will be rendered any required assistance in the rental area.

(2) The majority of leases provided that rental payments will be made to the DCAS office administering the lease agreement. In these cases, the ACO will give particular attention to the enforcement of the rental obligation imposed by the lease. DS&FM will maintain a memorandum of accounts receivable for all potential or actual monies due the United States under the lease. When facilities lease agreements require cyclical payments, DS&FM is responsible to alert the ACO when a payment is delinquent. Upon receipt of notice of the lessee's delinquency, the ACO will promptly issue to the lessee a written demand (request) for payment. To establish suspense for quarterly rental statements, the ACO shall assure input of R9 Coded Remark 41, with appropriate date, in accordance with section A-600. Some contracts may require other than a quarterly report.

d. *Applicability of FAR Part 45.* FAR 45.000 provides that Part 45 generally does not apply to leases except as to non-Government use of IPE under FAR 45.407 or to property to which the Government has acquired a title solely as a result of partial, advance or progress payments.

e. *Amending Leases.* When it is desired to add or replace items for existing leases, the identical procedures which are utilized for processing requests for new leases should be followed. Upon completion of these requirements, items will be added to existing leases by use of a Supplemental Lease Agreement which requires the same approvals and determinations as new leases. Removal of items from leases will be accomplished by either a partial or total termination. The action may be initiated by either the Government or the contractor. The ACO must acknowledge the receipt of any termination notices issued by the contractor within the time element specified in the termination clause of the lease agreement.

f. *Extension, Renewal or Closeout.* The ACO is responsible for assuring that a contractor's request for a lease extension or renewal is initiated not later than 90 days prior to the expiration date of the existing lease. In the event the contractor does not request renewal of the facilities lease agreement within the time limitation, prompt action will be initiated as of the date of expiration of the Facilities Lease Agreement to remove the equipment from the contractor's plant. Input of R9 Coded Remark 38 will ensure that the 120- and 60-Day Closeout Alert described under section A-600 will be utilized by the ACO as a reminder to query the PCO in writing as to plans for issuing a new Facilities Rental Agreement or extending the completion date.

15.306 SPECIAL TOOLING FOR NEGOTIATED FIXED-PRICE CONTRACTS

45.306-1 References

a. FAR 52.245-17, Special Tooling.

b. FAR 45.306-1, Providing Existing Special Tooling.

c. FAR 45.306-2, Acquiring Special Tooling.

d. FAR 45.6, Reporting, Redistribution, and Disposal of Contractor Inventory.

e. DFARS 45.306, Providing Special Tooling.

f. DLAM 8130.1, Contractor Inventory Management Manual for Contract Administration Services.

g. DLAM 8300.1, Production Manual for Contract Administration Services, Part 5-700, Technical Evaluation of Special Tooling and Special Test Equipment.

45.306-2 General

a. The ACO has overall responsibility for the administration of the special tooling clause (see FAR 52.245-17) and will be assisted by specialists (e.g., ISs, QARs, price/cost analysts, property administrators, and plant clearance officers, as required.)

b. The PCO, by incorporating this clause into the contract, has indicated probable future need for the special tooling by the Government.

c. The contractor is obligated to produce the end item or perform the services without additional charge for special tooling. Further, his obligations relative to management and control are to follow the normal practice in maintaining control records; make such records available to Government for inspection at reasonable times; identify the special tooling subject to the clause; and to maintain the identity and existing condition of all items of usable special tooling no longer required for production until the contracting officer has directed disposition in accordance with subparagraph (f) of the special tooling clause.

45.306-3 Procedures

a. Upon assignment of a contract containing the special tooling clause, the ACO will determine the need for and the extent of review required to ascertain the contractor's ability to discharge his obligations (see subparagraph 2c above). Such determination will be based upon considerations such as amount and nature of the special tooling involved, priority (degree of importance within the DoD programs) of the end item, projected life of the program, the existence of a contractor-maintained property control system covering Government-owned special tooling which has been approved by the PA and past experience relative to contractor's control of property. Reviews deemed necessary should have a direct relationship to the degree of control required by the terms of the contract and the Government's rights to ownership.

b. The ACO will request that such reviews as are deemed necessary are accomplished with particular emphasis given to a review for the classification and need for the tooling by the Industrial Specialist. Upon advice from any of the specialists involved which indicates contractor's procedures, records or controls are inadequate to comply with contract provisions and protect the Government's interests, the ACO will notify the contractor of the deficiencies and require corrective action.

c. Unless the contract provides otherwise, the ACO shall determine the date the contractor may be required to submit his initial list of special tooling and ensure that a suspense is established by the mechanized alert system (Coded Remark 03) as described in A-600. Within 60 days after delivery of the first production end item or shortly prior thereto, the ACO shall contact the PCO and request advice as to whether the list will be required. If affirmative, the ACO shall request the contractor to furnish such list and shall transmit it to the PCO. While a detailed analysis of the listing is not required, the ACO should assure himself that the listing represents an accurate accounting for special tooling made or acquired for the instant contract.

d. The disposition of special tooling under contracts terminated for the convenience of the Government will be accomplished in accordance with FAR 45.6 and DLAM 8130.1. Upon termination of a contract for default, the ACO will take action only as specifically directed by the PCO.

e. Upon contract completion or termination of all or a substantial part of work under the contract, the contractor, pursuant to the Special Tooling clause, will furnish a final list covering all items not previously reported unless the requirement is waived or extended by the PCO. The 60-Day Closeout Alert described under section A-600 will be utilized by the ACO as a suspense document to assure contractor submission of the final list. At the same time, the contractor may submit a written offer to retain any or all the items of special tooling. This offer will be considered at the time of final disposition.

f. The ACO is required by subparagraph (f) of the special tooling clause to advise the contractor within 90 days after receipt of any list or notice of special tooling as to the disposition thereof.

g. The plant clearance officer will take action to dispose of any items of special tooling which are not disposed of by transfer of title and delivery to the Government or by acceptance of contractor's offer to retain.

h. When all disposal actions are completed, the plant clearance officer will submit a copy of DD Form 1636 or SF 1424, Inventory Disposal Report, to the ACO. A single plant clearance case may involve only a portion of the special tooling concerned with a contract, so care must be exercised to preclude the closing of a contract until disposition has been made of all the special tooling acquired or manufactured by the contractor for use in performance of the contract.

45.310 FURNISHING AGENCY—PECULIAR PROPERTY (MILITARY PROPERTY), BAILMENT

45.310-1 References

a. FAR 45.310, Providing Agency-Peculiar Property.

b. FAR/DFARS 45.301, Definitions

c. DLAR 8210.1, Contractor's Flight Operations.

d. DLAM 7000.1 Accounting and Finance Manual.

45.301-2 Definitions

a. *Bailment.* A delivery of Government property to a contractor for a specific purpose directly related to a prime contract, then to be returned, or duly accounted for, to the Government when the special purpose is accomplished. Bailment does not include sale, donation, lease or the furnishing of property to contractor under a facilities contract. With the exception of DLA Clothing and Textile Bailment Type Contracts, the term bailment does not include Government property furnished for consumption or incorporation into an end product delivered to the Government in such a manner as to lose its identity.

b. *Master Bailment Agreement.* An agreement negotiated between the procuring activity and the contractor and incorporated by reference in individual bailment agreements. It sets forth the standard clauses utilized by the Government in the bailment procedure and establishes the basic terms and conditions under which the Government may loan such property. The master bailment agreement eliminates the need for negotiation clauses and conditions with the contractor for each separate bailment agreement.

c. *Bailment Agreement.* A bilateral contractual instrument which accomplishes the actual bailment of Government property and contains all information concerning the individual bailment, including an adequate description of the property; purpose of the bailment; use to be made of the property; authorization for modifications which may be incorporated in the property; the place where the property is to be delivered and returned; the period of bailment and any special provisions deemed necessary by the Government.

d. *Clothing and Textile Bailment Type Contracts.* Contracts which cover the furnishing of Government material to a contractor to cut into component parts and to fabricate into an end item. (Administration of this type bailment is not covered by this section; see DLAM 7000.1, paragraph 50212.

45.310-3 General

a. The ACO is responsible for assuring the contractor compliance with the terms and conditions of the bailment agreement. This agreement usually sets forth requirements for receipt maintenance and return of the equipment covered by the agreement.

b. It is mandatory that bailed property be returned to the Government promptly upon completion of the purpose for which bailed, even though the bailment agreement may provide for a longer period of loan. Whenever possible, actions concerning the bailment will be preplanned so as to prevent any delay in return of the bailed property to the Government.

45.310-4 Procedures

a. The ACO will be responsible for processing all bailment applications, all requests for the addition of property to an existing bailment agreement and all requests for the use of bailed property in support of other prime contracts which contain provisions for bailment. The ACO will be assisted by the PA, the IS, and the QAR and such other specialized personnel as may be required.

b. Initial bailment applications or requests will be reviewed to ensure that only items meeting the definition of Agency-Peculiar Property (Military Property) are considered. The request with ACO comments will be forwarded to the PCO for the production contract which requires support by bailed property. Requests for revision or expansion of an existing bailment agreement will be forwarded to the PCO of the contract in support of which the original bailment agreement was made. In forwarding the bailment agreement application or other request, the ACO will recommend approval or disapproval and, based on advice from the Production element, will comment upon the need and period of use of the equipment involved. The contractor's facilities as well as capabilities to operate, maintain, protect, and service bailed property should be accurately and thoroughly indicated in the request and evaluated by the ACO and technical elements. If the purchasing office approves the request completely or in a modified form, it will negotiate and execute a bailment agreement and forward copies thereof to the CAO for administration. If the purchasing office denies the request, it will so advise the ACO, who will formally notify the contractor of that determination.

45.310-5 Responsibilities

a. The ACO is assigned certain responsibilities in the bailment agreement area. Other responsibilities are assigned to the supporting technical elements, principally Quality Assurance and Property Administration. The principal responsibilities are listed below.

(1) All CAO personnel concerned with the administration of the bailment agreement will:

(a) Assure that the contractor takes timely or preplanned action in connection with any bailment matters which develop or could possibly develop in the prime contract performance.

(b) Assure that bailed property is not used for any purpose other than authorized in the prime contract and the bailment agreement.

(2) The ACO will:

(a) Assure that the Quality Assurance and the Property Administration elements are furnished copies of each bailment agreement.

(b) Assure that the contractor is advised of any pending bailment action, determine reasons for any undue delay in connection with such action, and initiate any expediting action pertinent to the situation.

(c) Ascertain whether the Government or the contractor is obligated to maintain and support the bailed property and assure that all concerned are aware of their responsibilities.

(d) Assure full compliance with the terms of the relevant contracts and agreements.

(e) Review any request from the contractor for waiver of technical order compliance or deviation from any part of the maintenance provisions and approve or disapprove the request if such action is within his delegated responsibilities. Otherwise, the ACO will forward the contractor's request with comments and recommendations to the PCO for required action. Maintenance responsibilities will not be waived or deviated from an extent greater than necessitated by the actual project or testing functions being performed. Any responsibility so waived will be immediately reinstated when the purpose for which the waiver was granted has been satisfied.

(f) Authorize bailed property to be temporarily recalled from the contractor at any time during the life of the bailment to accomplish other authorized missions. If such authorization requires an extension of the period of bailment to accomplish the purpose for which the property was originally bailed, the ACO will request issuance of an amendment.

(g) Accomplish closeout actions pursuant to FAR 4.804-5.

(3) The QAR will assure that:

(a) Incoming inspection of bailed property is performed by the contractor immediately upon receipt of the property.

(b) The receiving documents are annotated by the contractor to indicate any discrepancies between property requested, the property actually received and the property described in the bailment agreement.

(c) A report is submitted to the PA of any maintenance outstanding on the bailed property at the time of its receipt which the contractor will not agree to accomplish as part of his normal maintenance program at no cost to the Government.

(d) The contractor complies with all maintenance and technical order requirements specified in the bailment agreement or prime contract.

(4) The PA will:

(a) Assure that the contractor complies with all responsibilities of property management as set forth in FAR part 45, as appropriate, and as elsewhere required in the bailment Agreement or prime contract.

(b) Assure that immediately prior to a request for disposition of the bailed property, the contractor reconciles the property available for disposition with applicable bailment documents.

(c) Reaffirm instructions for return of the bailed property, if such instructions are contained in the bailment agreement.

(d) Request disposition instructions if such instructions are not contained in the bailment agreement.

(e) Assure that the activity which issued the bailment agreement is furnished a copy of the shipping voucher or document evidencing disposition.

45.4 CONTRACTOR USE AND RENTAL OF GOVERNMENT PROPERTY

45.4-1 References

a. FAR 45, Government Property.

b. FAR 52.245-9, Use and Charges.

c. FAR 52.245-18, Special Test Equipment.

d. DFARS 45.302-71, Providing Industrial Plant Equipment.

e. DFARS 45.4, Contractor Use and Rental of Government Property.

f. DAR Supplement 3, Property Administration.

g. DLAM 8300.1, Production Manual for Contract Administration Services.

h. DLAM 8135.1, Property Administration Manual for Contract Administration Services.

i. DLAR 8260.1, DCAS Quality Assurance Services to Industrial Property Management.

j. DCAA Manual 7640.1, DoD Contract Audit Manual.

k. DLAM 4215.1, Management of Defense-Owned Industrial Plant Equipment.

45.4-2 Definitions. Definitions applicable to this section are contained in FAR 45.101.

45.4-3 Policy. The policy of DoD regarding use of Government production and research property in possession of a contractor or subcontractor is set forth in FAR 45.102. Such property may be used by the contractor only when authorized by a contract or upon written authorization of the PCO or ACO.

45.4-4 Responsibilities

a. The ACO, in the administration of a facilities contract is responsible for:

(1) Evaluating the contractor's requests for facilities or changes to existing facilities and submitting recommendations to the PCO with respect thereto.

(2) Assuring that the required screening of facilities items is accomplished before purchase by the contractor (DFARS 45.302-71).

(3) Approving use of facilities on a noninterference basis pursuant to subparagraph (b) of the Use and Charges clause (FAR 52.245-9).

(4) Assuring payment of any rental due.

(5) Assuring the reporting of items no longer needed for defense production to DIPEC as excess.

(6) Assuring timely submission of contractually required reports.

(7) To establish suspense for quarterly rental statements, the ACO shall assure input of Standard Remark R9 Code 41, with appropriate date, in accordance with Section A-600. Quarterly alerts will be issued automatically thereafter until the contract moves to section 2. Some contracts may require other than a quarterly report.

(8) Although administration and enforcement of OSHA Standards is not a responsibility of DoD, the ACO should verify any nonconformances of Government property or facilities reported by Government representatives or contractor management personnel and advise the contracting activity.

b. The PA is the authorized representative of the ACO for administering the contract requirements and obligations relative to Government property. Instances of disagreements between the PA and the contractor will be referred to the ACO for resolution.

c. The Production element will provide technical evaluation of requests for facilities and contractors' Industrial Plant Equipment Replacement and Modernization Programs. The Production element will perform IPE utilization surveys on a periodic basis and reports of unauthorized use of IPE as required. The Production element will also conduct surveys on an "as required" basis. Details of the participation of the Production element in the administration of contracts involving GP&RP are contained in DLAM 8300.1, part 5.

45.4-5 Application for Facilities

a. *Application*

(1) The contractor may require the assistance of the ACO and the DCAS technical specialists in preparing an application for facilities. It is important for the expeditious processing of the contractor's application that a full and complete justification be included when the facilities request is originally submitted. Data to be included in the request are outlined in DLAM 8300.1, part 5-300.

(2) The ACO, assisted by the Production element and other technical personnel, should review the request and if complete and accurate, forward it to the PCO. If necessary, the ACO should obtain the correction of any deficiencies in the facilities request. The ACO can advise the contractor to either delete items which duplicate existing contract facilities for which open time will be available or increase local subcontracting to eliminate or reduce the need for Government facilities. The IS/ENG will examine loading methods used by the contractor in developing facilities requirements, eliminate nonseverables where not justified, and make proper appraisal of the availability of utilities, labor, housing, and transportation which may be necessary to support a proposed expansion.

b. *Screening.* Particular care must be exercised to assure that screening requirements of DFARS 45.302-71 are accomplished prior to the contractor acquiring new facilities listed in DFARS 45.301, which have an item acquisition cost of $10,000 or more. Special emphasis will be placed on the 45-day validity limitation of the nonavailability certificate portion of DD Form 1419, DoD Industrial Plant Equipment Requisition (block 37).

c. *Special Requirements Regarding Air Force Contracts.* The Air Force does not delegate to ACOs the authority to approve the acquisition of IPE. However, the ACO may sign the approval block (block 26) of the DD Form 1419 when the requirement for the contractor to acquire IPE is set forth in the contract. In such instances, the ACO must assure that:

(1) The contract (and modification thereto, if applicable) which authorized the acquisition of IPE and the date of the document are shown in blocks 10 and 10A of the DD Form 1419.

(2) The name of the PCO who executed the contract which authorized the acquisition of the IPE is entered in block 51 (Remarks) of the DD Form 1419. If a DCAS ACO receives a DD Form 1419 from a contractor and the contractual installment cited in block 10 does not contain authorization for the contractor to acquire the IPE, the DD Form 1419 should be forwarded to the Air Force buying office for approval.

d. *Acquisition of GP&RP Authorized by the PCO Without Prior Review of the Contractor's Justification by the DCAS Office.* In some cases the PCO has authorized contractors' acquisition of IPE or shipment of IPE to contractors' plants without prior review of the contractors' justifications by the DCAS office. While these situations usually occur as a result of PCO action prior to receipt of a contract in the DCAS office, there have been instances where PCOs continued these actions after assignment of the contract to a DCAS office for administration. Therefore, the ACO, upon receipt of a contract for administration which authorizes the contractor to acquire IPE, will request the Production element to verify that the contractor has a current requirement and can justify acquisition or retention of the equipment. Should the survey reveal that the contractor cannot provide adequate justification for retention of the equipment, either on hand or to be received, the PCO should be immediately apprised of all the facts. Followup will be maintained to ensure a decision from the PCO to justify retention or initiate disposition of the excess IPE.

e. *Acquisition of Special Test Equipment (STE).*

(1) DoD policy for providing contractors with STE is set forth in FAR 45.307. STE may be provided under formally advertised or negotiated procurements. In formally advertised procurements, the STE to be acquired or fabricated by the contractor is identified in the IFB.

(2) In negotiated procurements, contractors may acquire STE by two methods:

(a) by identifying their specific STE requirements in cost proposals. When identified in this manner, a technical evaluation should be performed by the Industrial Specialist/Engineer in accordance with Part 5-700 of DLAM 8300.1. Care must be used to assure that existing Government STE is screened in order to minimize the acquisition of new STE or components thereof. The results of the evaluation should be included in the final report forwarded to the PCO.

(b) When the exact identification of STE is unknown, at time of contract award, and there is probable future need for STE, the PCO must insert the FAR 52.245-18 clause into the contract. The clause requires contractors to notify the ACO 30 days in advance of the intent to acquire or fabricate STE, along with support data justifying acquisition and stating why the proposed test equipment qualifies as "special" as defined by FAR 45.101.

(3) The ACO should request a technical evaluation of the contractor's intended acquisition to include screening of existing Government STE. The ACO is responsible for notifying the contractor of the results of the evaluation. Any disagreement over the classification of STE which cannot be resolved by the ACO should be referred to the PCO for resolution, along with fully documented recommendations. The ACO should abide by the PCO's decision on classification and thereafter administer the equipment accordingly.

(4) Care should be taken by ACOs to identify contracts containing the FAR 52.245-18 STE clause and monitor these contracts to prevent unauthorized acquisition or fabrication of STE by the contractor.

45.4-6 Use and Rental of Government Production and Research Property

a. *Authority.* Government property may be utilized by the contractor only when authorized by a contract or by the PCO or ACO.

b. *Use of Government Property Without Charge.* Whenever a PCO wishes to authorize rent-free use of Government property under a supply contract or in subcontracts of any tier thereunder, he should require the proposed contractor(s) or subcontractor(s) to obtain the prior written concurrence for the use of the Government property from the procuring contracting officer cognizant of the property. The PCO, for supply contract, may request the ACO to advise whether the Government Property is available for use. In his response, the ACO should state that he has no objection to use of specific facilities, provided that there is no interference with work under prior contracts, that the time period of use of the facilities does not extend beyond the termination date for authorization as set forth in the facilities contract, and that the period of use does not conflict with the current facilities phaseout plan. A copy of each such advice should be furnished the PCO cognizant of the property. In the event these conditions cannot be met, the ACO will so advise the contractor, and the PCOs for both the facilities contract and the proposed procurement. Contractor's requests for use of Government-owned facilities must be processed expeditiously so that bidders, pursuant to FAR 45.2, can include the ACO's statement in their bid package.

c. *Authorization for the Use of Government Property Without Charge.* A PCO prior to authorizing rent-free use and, in addition, to obtaining the advice in subparagraph b above, is responsible for assuring that the Government receives consideration for the use of Government property, normally through reduced contract prices.

d. *Contract Files Documentation.* When Government property is used without charge, the official facilities contract file will include a record of the procurement contracts, subcontracts, or other basis which authorized use of the Government property without charge.

e. *Use of Facilities on a Rental Basis.*

(1) *Rental Agreements.* Unless use of Government property without charge is authorized in accordance with FAR 45.404, rent for the use of such property will be computed in accordance with the use and charges clause of the contract (FAR 52.245-9). In the event the contract does not specifically include a basis for computation of rent, the ACO and the contractor will execute a rental agreement which will establish the basis for computation of rent. The rental agreement must be executed prior to the contractor's use of any Government property under the contract. Whenever a separate rental agreement is not executed, the contract file will be documented to reflect the reason for the lack of such rental agreement.

(a) The rental agreement should, as a minimum, cover the following points:

1. The procedure to be followed in submitting the requests for use of facilities on a rental basis, including identification of the items for which authorization is requested and time limitations for such use.

2. The rental period and the measurement unit for computing credit for rent-free use (direct labor hours, machine hours, sales dollars). The measurement unit for the purpose of computing the credit in accordance with FAR 52.245-9(c)(4) must be analyzed to ensure an equitable apportionment of the rental charge. The preferable measurement unit is one that equates to time although a sales basis is permissible.

3. The contractor's procedure for accumulating data and computing rental payments.

(b) It is realized that there must be a degree of flexibility in the form and substance of rental agreements since the ACO must draw up an agreement which applies to the specific facilities contract involved. Paragraph 45.4-12 provides a suggested format for a rental agreement.

(c) Proposed rental agreements will be coordinated with the DCAA auditor prior to execution by the ACO, to assure that the contractor's records are capable of supporting the rental statement in accordance with the terms of the rental agreement. The auditor's statement must be retained in the official contract file.

(2) *Rental Payments*

(a) Contract provisions require the contractor in support of his rental payments to submit a written statement to the ACO describing his use of the facilities during the rental period and the rental due the Government as a result of such use. The written statement should divide the total use into these categories: rent-free use, rent-payable use on non-Government contracts, rent-payable use on Government contracts, and rent-payable for FMS usage.

(b) Checks for rental payments received by the ACO will be immediately forwarded to DS&FM or to such other office as may be designated in the contract. At the time of transmittal of the check for rental payment, or as soon thereafter as possible, the ACO, based on either DCAA review (see subparagraph (d) below) or his own analysis, will certify as to the correctness of the amount of payment. The certification will be forwarded to the Accounting and Finance Officer who received the rental payment.

(c) The ACO must notify the contractor in writing within 180 days following the receipt of his checks if the rental payment for the period is not regarded by the Government as the final amount due FAR 52.245-9(i).

(d) Except for those cases where a fixed rental is reflected in the contract, DCAA and the production element will be requested to review the contractor's submission and to verify the computation of the amount due to the Government unless the ACO determines that less frequent reviews will suffice to protect the interest of the Government. When such a determination is made, the contract file will be documented accordingly. The contract auditor's responsibilities regarding rental or use charges of Government facilities are set forth in DCAA Manual 7640.1, paragraph 9-304.

45.4-7 Non-Government Use of IPE

a. *Limitations on Use of IPE*

(1) At the time a facilities contract is received for administration, the ACO will assure that the contractor is aware of the requirement for prior written approval of the contracting officer for any non-Government use of Government-owned IPE. Each such approval will contain limitations on the contractor's right to use the equipment consistent with the requirements of FAR 45.402(c).

(2) Also, the ACO will assure that the contractor is aware that before authorization can be granted for non-Government use exceeding 25 percent of the total time the IPE is available for use (based on the contractor's normal work schedule) the approvals required by FAR 45.407 will be obtained. The contractor's request for non-Government use of Government-owned IPE in excess of 25 percent shall be submitted to the ACO at least 6 weeks in advance of the projected commercial use. The ACO will assure that the contractor's request complies with the requirements of FAR 45.407.

b. *Requests for Non-Government Use*

(1) Approvals for any non-Government use of Government-owned IPE will be granted only when the provisions of FAR 45.407(b) are met. Requests for non-Government use of IPE not exceeding 25 percent of the total time the IPE is available for use can be granted by the ACO. Requests for non-Government use of IPE exceeding 25 percent cannot be granted by the ACO until approvals required by FAR 45.407(a) are received.

(2) ACOs will refer the contractor's request to the Production element for analysis and a recommendation relative to the validity of the information reflected therein. The ACO will request DCAA to assist in the analysis of the financial aspects of the contractor's request, when access to the contractor's financial records is required. When the contractor has requested non-Government use exceeding 25 percent, the ACO shall evaluate the data submitted by the Production element and DCAA and shall forward the entire package, including a summary of his evaluation and a recommendation relative to the contractor's request, to the PCO cognizant of the property for transmittal through channels for required action in accordance with FAR 45.407.

(3) Pending the receipt of an affirmative reply to the contractor's request, the ACO will assure that the facilities are used for non-Government purposes only with his approval and that such use shall be limited to 25 percent or less of the total time the facilities are available for use.

c. *Controls.* Upon the granting of any approval for non-Government use of IPE, the ACO will establish controls to assure that the contractor does not use the property for a period in excess of that authorized. The ACO will also assure that any requests for extension of approvals are submitted in a timely manner.

45.4-8 Administration of Facilities Contracts. Since the provisions and requirements of facilities contracts differ sharply from most other types of contracts, the manner in which ACOs administer these contracts has to be tailored to the clauses and special provisions/requirements in each such contract. Some of these which are common to all facilities contracts are discussed below:

a. *Utilization Surveys*

(1) Utilization surveys of Government-owned IPE and process oriented OPE are performed by the Production element at least annually. Initial reviews of contractor's procedures are made upon receipt of a contract for administration under which Government-owned IPE and/or OPE are to be provided to a contractor. Utilization survey reports containing recommendations for contractor action to correct or improve procedures and controls established for controlling IPE and OPE are coordinated between the Production element and the PA, and brought to the attention of appropriate contractor personnel. Unresolved issues involving contractor's responsibilities and compliance will be referred to the ACO.

(2) In the event that IPE, regardless of dollar value, is determined to be idle or excess, the PA will assure the preparation and submission of excess declarations to DIPEC. In the event the PA and the contractor cannot reach an agreement regarding classification of IPE as being excess (unless previously obtained), the ACO will request the contractor to submit detailed and specific reasons justifying retention for each item. If, in the opinion of the ACO, the contractor's justification does not support retention, the ACO will direct the contractor to declare the items under consideration to be excess to current and known requirements and will notify the PCO cognizant of the property that such direction has been issued to the contractor.

b. *Unauthorized Use*

(1) Upon advice from the PA, the DCAA auditor, the Production element, or any other sources, that Government property has been subjected to unauthorized use, the ACO will request the con-

tractor to prepare a statement of use and rentals due. This request should identify the IPE involved and the periods of unauthorized use. The statement will be reviewed by the auditor (DCAA) (see subparagraph 45.4-6e(2)(d). Simultaneously, the ACO will request a review of the contractor's practices and procedures to assure that safeguards are established to preclude recurrence of unauthorized use of IPE. The ACO will determine the rental due in accordance with rates shown in the use and charges clause, FAR 52.245-9 and the contractor will be held liable for the full monthly rental, without credit for authorized use of such items for each month or part thereof in which unauthorized use occurred. Check will be made payable to the specific agency maintaining the account and sent to the ACO who will transmit it to the Finance Office designated in the contract to receive payment.

(2) If the contractor appeals the ACO's determination of rentals due, the action will be analyzed by the ACO and his team to determine if part of all of the assessment of the liability should be waived because its imposition would amount to gross inequity. If this analysis indicates that part or all of the liability should be waived, such an action should be recommended to the PCO cognizant of the property. The ACO should carefully review all circumstances prior to recommending any waiver of liability FAR 52.245-9(j), particularly when there has been a prior waiver granted.

c. *Maintenance*

(1) The PA in approving the contractor's property control system, also approves the contractor's maintenance procedures (FAR 45.502). Assistance provided the PA by the Quality Assurance and Production elements is outlined in DLAR 8260.1, and DLAM 8300.1, chapter V, part 5.

(2) When it is ascertained that the contractor's maintenance program is inadequate, the PA will request the contractor to correct the deficiencies. Should the contractor fail to take corrective action or fail to make the adjustments required to protect the interests of the Government within 60 days, the ACO should be informed so he may initiate action to enforce the terms of the contract (see paragraph 45.4-10).

d. *IPE Replacement and Modernization*

(1) Implementation of the IPE Replacement and Modernization Program requires close cooperation between the ACO and the Production element. Detailed operating procedures are contained in DLAM 8300.1, part 5-600. The ACO will assure compliance with FAR 52.245-16, Facilities Equipment Modernization, when this clause is in the contract, and obtain the DD Form 1651, Industrial Equipment Modernization Program—Post Analysis Report, pursuant to the requirements of the clause.

(2) The DD Form 1651 will generally show a net cost savings to the contractor. These savings are normally recouped by the ACO in accordance with the provisions of FAR 52.245-16, Facilities Equipment Modernization. However, some contracts contain a nonstandard facilities equipment modernization clause which states "Amounts due the Government under this clause shall be returned as directed by the contracting officer." In each instance when a facilities contract or lease does not designate the person (ACO or PCO) responsible for the determination of the amount and method of recoupment of the savings accrued by the contractor as the result of facilities equipment modernization, the ACO will confer with the PCO to fix the responsibility for effecting the recoupment and will document the contract file to reflect the agreement.

(3) When any item of facilities has been modernized by substantial rebuilding at Government expense, the ACO, with assistance from the Production element, must make the decision as to whether the rebuilding resulted in an increase in the original capability of the item, with a corresponding increase in value. When the decision is in the affirmative, the acquisition cost of the item will be increased to include the increased value of the item (FAR 52.245-9(c)(2)(ii). Whether such decision is affirmative or negative, the contract file will be documented to reflect the rationale supporting the decision.

e. *Reports*

(1) Facilities contracts vary as to requirements for reports. The ACO will review each facilities contract upon assignment for administration to familiarize himself with the reporting requirements of the contract. He will establish controls to assure that reporting deadlines are met, review all reports, provide pertinent comments, and distribute the reports in accordance with the provisions of the contract.

(2) Air Force Form 3003, Status of Facilities Contracts, is a contractually required report for Air Force facilities contracts. Care will be exercised to assure that all sections of the form are accurately completed. Section V of the form which is entitled "Air Force Approval (For Air Force Use Only)" will be completed by the DCAS ACO administering the facilities contract.

45.4-9 Completion of the Purpose for Which Property Was Authorized

a. IPE is not permitted to remain idle and unreported to DIPEC in anticipation of future use by the contractor. Each item of IPE is idle when it is no longer required for the performance of the contract(s) for which it is provided or authorized. DFARS 45.505-6 provides instructions to the contractor for reporting IPE no longer necessary for contract requirements. The PA is responsible for assuring that a DD Form 1342, DoD Property Record, is forwarded to DIPEC within 15 working days of the last use of the IPE for the purpose authorized.

b. DLAM 8300.1, paragraph 5-204a(5), provides for the Production element to conduct a special survey when a significant contract change occurs in the contractor's production schedule. Examples of such changes are partial terminations, product change, program adjustment, or contract completion or termination. While the survey report is furnished the PA for action, a copy is provided to the ACO for information.

45.4-10 Unsatisfactory Property Control Systems. In accordance with FAR 45.502(e), the PA will notify the ACO by memorandum when he is unsuccessful in obtaining compliance with the property control system requirements of a contract. Upon receipt of this memorandum, the ACO will proceed in accordance with FAR 45.104 and notify the contractor that he has 30 days in which to correct the system deficiencies. Such notice should also state that in the event the deficiencies are not corrected within the 30 day period, the Government shall withhold or withdraw approval (specify which) of the contractor's property control system. The notice should also advise the contractor that such action could result in the contractor being liable for any loss or damage to Government property until his system is approved. One copy each of this notice shall be furnished to the PA, all concerned PCOs and, at the ACO's option, to higher authority within his own supervisory chain. If the contractor does not correct the deficiencies within the 30 day period, the ACO shall send a certified letter, return receipt requested, to the contractor advising of withholding or withdrawal of system approval. A sample letter which may be used when it is necessary to withdraw approval of the property control system is at paragraph 45.400-13. The letter should be revised as appropriate if the action is to withhold rather than withdraw approval. A copy of this letter will be furnished to the preaward survey monitor, the PA, each PCO concerned, and the DCASMA/DCASPRO and DCASR Commanders shall be advised of the situation. During this period, pending total correction of the system by the contractor, the ACO will assure that the PA has increased his surveillance of the property control procedures with special emphasis on those areas which have been indicated as being deficient.

45.4-11 Facilities Contracts About To Expire. The ACO will assure that the PCO cognizant of the property is queried in writing at least 120 days prior to the expiration of any facilities contract as to his plans for extending the expiration date. Input of R-9 Coded Remark 38 and the 120-Day Closeout Alert described under section A-600 will be utilized by the ACO. A 60-Day Closeout Alert will also be provided to the ACO. Followup will be maintained to assure contract continuity or timely disposition of the facilities.

45.4-12 Format for Rental Agreement

RENTAL AGREEMENT

This Agreement, dated ______ day of ______, 19___ is entered into by and between the Contracting Officer (executing this Agreement for and on behalf of the United States of America) and ______ Company (hereinafter called the "Contractor") pursuant to Clause ______ "Use and Charges" of contract ______ (hereinafter called the "Contract") for the purpose of establishing the method of determining the amount of rental charges to be paid by the Contractor for its use of facilities provided under the contract.

It is hereby agreed by and between the parties hereto as follows:

1. Effective Date

This Agreement is effective ______ and shall run concurrently with the facilities contract under which it is written.

2. Facilities

a. The facilities to be provided to the Contractor under the Contract are the items of machinery and equipment set out in the Schedule of Facilities attached hereto and the term "facilities" as used herein shall mean and include such items of machinery and equipment.

b. The Schedule of Facilities shall include a brief description of each item of the facilities, its identification number, its year of manufacture, total acquisition cost for rental purposes and rental rate as of the inception of the current calendar year. Total acquisition cost for rental purposes includes the original cost of the facilities item, the cost of accessories furnished, the cost of transportation, and installation costs if such costs are paid or reimbursed directly by the Government. When any item of the facilities has been modernized by substantial rebuilding at Government expense so as to enhance its original capability, the acquisition cost for that item shall include the increased value, as determined by the Contracting Officer that such rebuilding and modernization represent.

3. Rental Periods

The rental periods shall each be of ______ months duration.

4. Authority to Use Facilities

a. Contractor shall submit to the Administrative Contracting Officer a written list of the facility items for which authorization is desired, pursuant to paragraph ______, Clause ______ of the contract, not later than 10 days prior to commencement of the rental period. Each such list shall be entitled, "Requested Authorization List," shall be numbered, and shall specify the period of time for which authorization is requested, such period in no event to exceed one year. Each such Requested Authorization List shall be accompanied by a letter requesting use of the facilities set forth in such list on a charge basis.

b. Upon receipt of each such Requested Authorization List and letters requesting authorization to use facilities on a charge basis, the Administrative Contracting Officer shall furnish the Contractor with such of the requested authorizations as may be granted, by signing and returning a copy of the Authorization Request List and letter to the Contractor. Unless specifically referenced therein, this authorization by the Administrative Contracting Officer shall not be construed to authorize non-Government use exceeding 25 percent of the total use. Before non-Government use of Government-owned IPE, in excess of 25 percent of the time available for all use may be authorized, prior approval of the Assistant Secretary of Defense (Manpower, Reserve Affairs and Logistics) and/or the Office of Emergency Preparedness shall be obtained. Only the machine tool attachments and accessories listed in the property records as pertaining to the respective machine tools authorized for use can be utilized. The facilities authorized for use under this paragraph are hereinafter referred to as "authorized facilities."

5. Calculation of Rental Charge

In any period in which the facilities are used on both charge and rent-free basis, the amount of rental to be paid shall be computed in accordance with the following formula pursuant to Clause ____ paragraph ____, of the contract:

$$\text{Full Rental} - \left(\text{Full Rental} \times \frac{\text{Rent-Free Machine Hours Used}}{\text{Total Machine Hours Used}}\right) = \text{Rental Due}$$

As used in the foregoing formula, the term "Full Rental" means rental for all authorized facilities for the rental period at the rates set forth in the Rental Schedule of Facilities; the term "Rent Free Machine Hours Used" means the aggregate machine hours used by the contractor on the authorized facilities during the rental period on a no charge basis: the term "Total Machine Hours Used" means the aggregate of all the machine hours of facilities used during the rental period; and the term "Rental Due" means the rental due from the contractor for the rental period.

6. Submission of Use Statements

In Accordance with Clause ____, paragraph ____, the Contractor will submit five copies of a rental statement. The statement will be prepared and submitted to the Administrative Contracting Officer within 90 days after the close of each rental period. The statement will divide the total use into these categories: rent-free use, rent-payable use on Government contracts rent-payable use on non-Government contracts and rent payable for FMS usage. The statement will refer to the document authorizing the requested use or uses on a charge basis and date of the Administrative Contracting Officer's authorization. It will list for the rental period (1) the total machine hours required for products produced in whole or in part on the authorized facilities in the Contractor's ____ plant on a rent-free basis; (2) the total machine hours required for products produced in whole or in part on the authorized facilities in its ____ plant during the same period; (3) the acquisition cost for rental purposes of facilities authorized for use during the rental period under paragraph 4 above; and (4) the rental for the authorized period of use. *Note: Example is in machine hours although other bases are permitted.

7. Amendments to this Agreement

This Agreement may be amended by mutual agreement of the parties.

8. Abatement of Rent

Rental for any item of facilities approved for use on a charge basis for a rental period shall not be abated or reduced except for credit computed in accordance with paragraph 5 above for no-charge use; provided, however, in the event any facilities are not available for use during a rental period as a result of (1) strikes or work stoppages; or (2) loss or damage to the facilities caused by fire, flood, lightning, cyclone, tornado, explosion, strike, vandalism, sabotage, civil commotion, or any other peril of a type not listed, if such peril is customarily covered by insurance (or by a reserve for self insurance) in accordance with the normal practice of the contractor or the prevailing practice of the industry in which the contractor is engaged with respect to similar property in the same general locale; (3) requirements for maintenance not required to be performed by the contractor under the provisions of the contract; or (4) a total or partial termination of the facilities contract: then and in that event, rental shall be reduced accordingly to reflect such nonavailability

9. In the event of any inconsistency between this Agreement and the provisions of the Contract the provisions of the Contract shall govern.

In witness whereof, the parties hereto have executed this Rental Agreement as of the day and year first above written.

	UNITED STATES OF AMERICA
BY ______________________	BY ______________________
(Signature of Corporate Officer)	(Signature of Contracting Officer)
______________________	______________________
(Typed Name of Corporate Officer)	(Typed Name of Contracting Officer)

45.4-13 LETTER FORMAT FOR WITHDRAWAL OF APPROVAL OF PROPERTY CONTROL SYSTEM

Mr. Joe Dokes, President
XYZ Corporation
100 No Way Avenue
Anytown, USA

Dear Mr. Dokes:

The Government contract(s) listed on the Enclosure hereto, require the XYZ Corporation to establish and maintain, in accordance with Appendix B, Defense Acquisition Regulation/Subpart 45.5, Federal Acquisition Regulation, a system to control, protect, preserve and maintain Government property in your possession. The applicable provisions of the referenced contract(s) provide that failure of the contractor to maintain and administer an acceptable program or system, as indicated above, shall be presumed to be a failure resulting from willful misconduct or lack of good faith on the part of the contractor's managerial personnel.

The Property Administrator, by letter dated _____, gave notification that the XYZ Corporation's system for the maintenance, protection, preservation and control of Government property was reviewed and found not to meet the requirement of FAR 45.5 in the following respects:

(List all Deficiencies)

By letter of _____, you were advised that approval of the property control system would be withdrawn unless the noted deficiencies were corrected by _____. As of this date, these corrections have not been accomplished. This undue delay in complying with your contractual requirements concerning Government property and your continued delay in rectifying noted deficiencies indicates a lack of concern by the XYZ Corporation regarding its contractual responsibilities and is evidence of lack of good faith on the part of XYZ Company's managerial personnel. Therefore, the approval of your Property Control System is withdrawn as of _____. As a result of this action, the XYZ Corporation shall be liable for any loss or damage to Government property occurring after receipt of this notice in accordance with the provisions of the applicable contract.

A copy of this letter is being furnished the pre-award survey monitor and each Procuring Contracting Officer concerned. Your failure to maintain an acceptable property control system could adversely affect future recommendations for the award of contracts.

Restoration of approval of your property system is dependent upon the correction of the above listed deficiencies to the satisfaction of the contracting officer.

Sincerely,

Administrative Contracting Officer

(Registered or Certified Mail)

45.4-14 Checklist for Administration of Facilities Contracts. Periodic review of each facilities contract being administered by the ACO is essential. The following checklist highlights some of the most important actions to be taken by the ACO in the administration of these contracts:

a. *Rental Agreements*

(1) Is there a separate rental agreement?

(2) If not, is file properly documented to explain its absence?

(3) Does the formula for computing rent due result in an equitable return to the Government?

(4) Does the file show that the rental agreement was checked by DCAA?

(5) Is the file documented to show that the acquisition cost on which rental is based includes those transportation and installation costs borne by the Government?

(6) Does the contractor submit written requests for use of Government-owned facilities prior to start of rental period in accordance with the use and charges clause of the contract and the rental agreement?

b. *Rental*

(1) Are the rental use and payment statements submitted by the contractor within the time limitations set forth in his contract?

(2) If not, has the ACO invoked the penalties for late payment set forth in the contract?

(3) Has the ACO requested audit of the contractor's rental payment in a timely manner so that the contractor can be notified of any discrepancies in his rental payment prior to 180 days after the receipt of the rental payment by the ACO?

(4) Are there any disputes as to the amount of rent due?

(5) Has any money been lost because the Government did not notify the contractor of any discrepancies in the rental payment within the 180 days specified in the contract?

(6) Did the ACO certify, when transmitting the check, as to the correctness of the amount of payment or if not, did he indicate the date by which he would furnish such certification?

(7) Does rental statement break out usage into three categories?

(a) Government rent-free.

(b) Government rent.

(c) Commercial.

c. *Unauthorized Use*

(1) Is equipment being used only as authorized by the ACO or as set forth in the contract?

(2) Has any instance of unauthorized use been detected?

(3) How?

(4) What action has been taken by the ACO?

(5) In case of unauthorized use, has a demand been placed on the contractor for full monthly rental in accordance with the provisions of FAR 52.245-9(i)(j)?

(6) What was the result?

(7) What special actions/reviews requested by ACO to prevent recurrence?

d. *Non-Government Use*

(1) Has the contractor submitted a proper request for non-Government use?

(2) Was the request reviewed by Production prior to approval or referral by the ACO?

(3) Was the advice of DCAA solicited to assure that the contractor's records are organized in such a manner that the percentage of non-Government use can be determined?

(4) If the request was for the non-Government use in excess of 25 percent of available time, when was the request processed in accordance with FAR 45.407?

(5) When was the request approved?

(6) For what period of time was the approval effective?

e. *Property Control System*

(1) Is the contractor's property control system approved?

(2) If not, are outstanding problems in process of resolution?

(3) Has the ACO been requested to assist the Property Administrator in obtaining contractor rectification of deficiencies?

(4) Date of last utilization survey.

(5) Did all concerned take the action recommended by the survey?

(6) If not, is the file properly documented to explain lack of action?

f. *Maintenance.* Has an agreement been made with the contractor in writing as to the composition of the "normal" maintenance to be performed by the contractor (FAR 52.245-7 and 52.245-11)?

g. *Modernization*

(1) Have there been any modernization projects approved within the last three years?

(2) Dollar value approved.

(3) Dollar value accomplished.

(4) Have the acquisition costs been increased as a result of the modernization accomplished (FAR 52.245-9(c)(2)(ii) or determination made that this should not be done?

(5) Has contractor complied with requirements of modernization clause in submitting report?

(6) Did ACO have the report reviewed prior to forwarding it to the PCO?

(7) Has it been established whether the ACO or the PCO will negotiate with the contractor to

recoup savings which should accrue to the Government as the result of the modernization?

(8) How much consideration has accrued to the Government as a result of the accomplishment of the modernization program?

(9) In what form was this consideration received (dollar refund, lower contract price, etc.)?

h. *Funds*

(1) Amount of funds obligated?

(2) Unliquidated obligations?

(3) When was last fund review conducted?

(4) Are reasons for the existence of the ULO acceptable?

(5) Has action been taken to release excess funds?

i. *Phaseout Plan*

(1) Does the contractor have a phaseout plan?

(2) Have milestones been established?

(3) Are the milestones properly monitored?

(4) Current status of plan.

45.5 LOSS, DAMAGE, OR DESTRUCTION OF GOVERNMENT PROPERTY

45.5-1 References

a. FAR 45.5, Management of Government Property in the Possession of Contractors.

b. FAR 45.502, Contractor Responsibility.

c. FAR 45.503, Relief From Responsibility.

d. FAR 45.504, Contractor's Liability.

e. FAR 52.245-2, Government Property (Fixed-Price) (g) Risk of Loss.

f. FAR 52.245-4, Government Property (Cost-Reimbursement, Time and Material (or Labor Hour) (g) Limited Risk of Loss.

g. DFARS 45.5, Management of Government Property in The Possession of Contractors.

h. DAR S3-602, subject as above.

i. DLAM 8135.1, Property Administration Manual for Contract Administration Services.

45.5-2 General

a. The degree of risk assumed by the Government and the Contractor concerning loss, damage, or destruction of Government property varies in accordance with the Government Property clause in the contract and the terms of the contract itself. Therefore, the contract clauses should be thoroughly reviewed and understood before a conclusion is reached as to the contractor's liability for the loss, damage, destruction, or unreasonable consumption of Government property or any determination is made by an ACO based on the conclusion and recommendations of the PA.

b. When it is anticipated that an indebtedness to the Government will occur or knowledge is gained that an indebtedness does exist, the applicable Accounting and Finance Office will be notified in writing of the amount of the debt (actual or estimated) as a basis for establishing an accounts receivable (see part 32.6).

45.5-3 Procedures

a. In accordance with the provisions of FAR 45.504, the PA will obtain from the contractor a written statement reporting incidents of loss, damage, destruction, or unreasonable consumption of Government property.

b. When the contractor acknowledges liability, the PA will forward a copy of the credit memorandum or other adjusting document to the ACO and contract auditor, if appropriate, to assure that credit accrues to the Government.

c. Should an analysis of the contract provisions and the facts involved lead to the conclusion that the loss, damage, destruction, or unreasonable consumption constitute a risk assumed by the Government, and therefore the contractor is not liable, the PA will so advise the contractor in writing. This notification will relieve the contractor of responsibility for the property and will permit the contractor to revise his records accordingly.

d. If the PA concludes that the contractor should be held liable for the loss, damage, destruction, or unreasonable consumption of Government property, he will forward the complete file with his conclusions and recommendations to the ACO for review and determination. With technical and legal assistance as determined necessary, the ACO will review the case and will make a determination as to the contractor's liability. The ACO will formally furnish a copy of his determination to the contractor.

e. Should the ACO determine that compensation is due the Government he will promptly issue to the contractor a written request (demand) for payment. A copy will be furnished to the disbursing officer. Procedures pertaining to claims are contained in part 32.6.

f. A copy of the ACO determination holding the contractor liable will be furnished the PA who will keep it in suspense pending the completion of any action required by the contractor (compensation to the Government or repair or replacement of the property). This determination of liability, if appealed, should be handled in accordance with part 33.

g. Determination of contractor liability for unauthorized use, unreasonable consumption, loss, damage, or destruction of Government property will be made by the TCO in connection with contracts which have been completely terminated for the convenience of the Government.

45.605 TRANSFER AND RETENTION OF GOVERNMENT PROPERTY IN POSSESSION OF CONTRACTORS

45.605-1 References

a. FAR 45.6, Reporting, Redistribution, and Disposal of Contractor Inventory.

b. DFARS 45.6 (subject same as a.).

c. FAR 52.245-5, Government Property (Cost-Reimbursement, Time and Material, or Labor-Hour Contracts)

d. DCAAM 7640.1, Chapter 14.

45.605-2 General

a. FAR 52.245-5 and other Government property clauses state in the paragraph, "Use of Government Property", that the Government property shall, unless otherwise provided herein or approved by the contracting officer, be used only for the performance of this contact. No exceptions are provided. In addition, FAR 45.503(a)(2), incorporated into contracts, provides for relief from responsibility for Government property. A contracting officer's approval is required for all disposal of Government property, including retention by the contractor at cost. The ACO has the authority to transfer property only when such authority is delegated by the PCO.

b. FAR 45.605-3 deals with the purchase, retention or return to suppliers of contractor-acquired property under cost-reimbursement type contracts. As noted in a above, all transactions require a contracting officer's approval.

45.608 PACKING, CRATING, AND HANDLING (PC&H) OF EXCESS GOVERNMENT PROPERTY IN THE HANDS OF CONTRACTORS

(HIGH VULNERABILITY: 45.608)

45.608-1 References

a. FAR 42.302, Contract Administration Functions.

b. FAR 45.608-7, Reimbursement of Costs for Transfer of Contractor Inventory.

c. DAR Section XXIV, Personal Property in the Possession of Contractors.

d. DLAM 8130.1, paragraph 45.608-7.

45.608-2 Scope. This Part sets forth procedures that will be used by Contract Administration personnel in amending contracts where PC&H funds are required, or when necessary, contracting for such services.

45.608-3 General

a. The contractor is responsible, subject to Government direction, for PC&H services on Government property when his contract contains one of the DAR or FAR Government property/special tooling/special test equipment clauses. PC&H services necessary to ship Government property are obtainable from the contractor in possession under the same Government property clause that authorized the contractor to acquire and use Government property. Accordingly, contracting for PC&H services by Government personnel is unnecessary. The function of directing the contractor to perform pursuant to the Government property clause is to be accomplished by the Plant Clearance Officer. Should the occasion arise where it becomes necessary, in the absence of existing contractual authority, for the Government to write a PC&H contract with a third party, such requirement constitutes new procurement which would ordinarily be referred back to the PCO. However, FAR 42.302(a)(29) states "when the ACO determines it to be in the Government's interest the services may be secured from a contractor other than the contractor in possession of the property."

b. FAR 45.608-7 requires that costs incident to transfers, including packing, crating, preparation for shipment, loading and transportation, which are not the responsibility of the contractor, shall be borne by the transferee. However, DFARS 45.608-7 states that DLA will provide funds for the movement of all IPE under its control. Hence, all shipping instructions issued by DIPEC directing the movement of all IPE will contain a fund citation for PC&H as well as for second destination transportation costs.

45.608-4 Procedures

a. In those cases where the contractor is not contractually required to furnish the PC&H services at his own expense, the ACO, upon receipt of a copy of the Plant Clearance Officer's letter directing the contractor to ship, and a copy of the shipping instructions containing fund citations for PC&H services (see DLAM 8130.1, paragraph 45.608-7), will issue a contract modification to the existing contract incorporating funds for such services. Since fixed-price contracts normally require the contractor to provide PC&H services without additional funds, ACOs should assure that funds for PC&H are added only when contractually required. ACOs will ensure that the amendment includes a reference to the DD Form 1348-1 DoD Single Line Item Release/Receipt Document (Movement Order Number if a DD Form 1149 Requisition and Invoice/Shipping Document is used) plus the Identification Number, and that "Defense Depot Memphis, ATTN: DDMT-FDDA, Memphis, Tennessee 38114" is furnished a copy of the contract modification.

b. In writing contracts for PC&H services, the ACO will:

(1) Use the services of the technical specialists (plant clearance, quality assurance, production, transportation, packaging, pricing, etc.) within the DCASR to evaluate contractors' proposals/bids to the extent he believes necessary.

(2) Include the applicable Government Property clause (see FAR 52.245).

(3) Include the applicable Service Contract Act clause.

(4) Include contractually required military packaging specifications. If not already contractually provided, include PC&H requirements as prepared/approved by the packaging specialist.

(5) Submit proposed contracts of $30,000 or more to the Board of Review (see Part 90.16).

(6) Ensure that a reference is made to the DD Form 1348, Shipping Instruction Document number (Movement Order Number if a DD Form 1149 is used) plus the IPE Identification Number. Sufficient lead time should be included in the contractually established delivery date to assure receipt by the consignee on the DIPEC required delivery date. Every effort should be made to meet this required delivery date. The Property Management element, which is responsible for notifying DIPEC of delays in IPE shipments, should be provided a copy of the modification or contract.

(7) Include the amount of funds committed, the amount of funds obligated for each Document/Identification Number, and the amount of funds excess.

(8) Distribute contracts in accordance with FAR Subpart 4.2 and DFARS 4.202. Only one original will be prepared and executed; all other

copies required for distribution will be reproduced from the single original. Ensure that "Defense Depot Memphis, ATTN: DDMT-FDDA, Memphis, Tennessee 38114" is included on the distribution list.

(9) If the contract is in excess of $25,000, a DD Form 350 will be prepared in accordance with FAR 4.6, DFARS 4.670 and DFARS 4.671. The purchasing office code entered in Item 5 will be the applicable DCASR code only. DCASR Directorates of Contract Management will establish appropriate controls in accordance with DFARS 4.671-5(a)(2)(i) to prevent duplication of report numbers. The signed original of the form will be forwarded to Defense Logistics Agency, Executive Director, Contracting, Attn: DLA-PPS, Cameron Station, Alexandria, Virginia 22304-6100.

(10) If the contract is for $25,000 or less, a copy of the contract, marked "For Monthly Procurement Summary Report" will be forwarded to the DCASR Directorate of Command Support.

c. Removal costs, including disconnect from power, air, water, disassembly or dismantling, security, movement of other machines to facilitate accessibility, interruption of contractor production and other similar activities, are not a part of PC&H and are not funded by DLA. Funds to support such costs as well as restoration of facility costs will be budgeted by contractors when required by the contract and requested from the PCO for the accountable contract.

46 QUALITY ASSURANCE

46.1 Reference

a. FAR 46, Quality Assurance.

b. DFARS 46, Quality Assurance.

c. DLAM 8200.1, Procurement Quality Assurance.

d. DLAM 8200.2, Procurement Quality Assurance Support Manual for Defense Contract Administration Services.

e. DLAR 4155.24, Reporting of Product Quality Deficiencies Across Component Lines.

f. DLAR 8260.2, Materiel Deficiency Investigation and Reporting Systems.

g. DLAR 8200.10, Control of Nonconforming Material.

46.2 *General.* This Part covers contract quality requirements, and the role of Government Quality Assurance in ensuring the delivery of conforming supplies and services. Additionally, specific guidance is provided for ACOs regarding Corrective Action Requests, Nonconforming Supplies or Services, Recoupment of Reinspection Costs, and Material Deficiency Investigation and Reporting procedures.

46.3 Contract Quality Requirements

a. Generally, the Government relies upon contractors to perform all inspection and testing necessary to ensure conformance of the supplies or services with the requirements of the contract. Exceptions to this policy are made on a case-by-case basis when specific testing requirements are so complex or costly as to unnecessarily restrict competition, or the intended uses of the end items or services are so critical (in terms of mission needs, or life-safety considerations) the Government feels it must do (or arrange for) the testing itself.

b. There are three basic levels of contract quality requirements used in Government contracting:

(1) Contractor Responsibility (FAR 52.246-1)—the contractor makes all inspections and tests necessary to ensure product conformance, possibly without any Government participation or oversight. This level is normally used for non-complex, non-critical items.

(2) Standard Inspection (FAR 52.246-2 through 10)—the contractor must have a formalized inspection and testing *system* that is acceptable to the Government. (Generally, Standard Inspection systems will be considered acceptable if they conform to prevailing commercial practices for the level of complexity and criticality of the items being produced.) This level is normally used for somewhat more complex and/or more critical items. There usually is Government oversight and/or participation in the contractor's inspection and testing.

(3) Higher Level Quality Requirements.

c. The Department of Defense, through the DFARS separates "Higher Level Quality Requirements" into two sub-levels:

(1) Inspection Systems (FAR 52.246-11 with MIL-I-45208A)—the contractor's inspection and testing system must meet the requirements of MIL-I-45208A. This level is normally used for complex, non-critical, or non-complex, critical items.

(2) Quality Program (FAR 52.246-11 with MIL-I-45208A and MIL-Q-9858A)—the contractor must have an acceptable, comprehensive program for ensuring product conformance and quality that meets the requirements of MIL-Q-9858A. This level is normally used for complex, critical items.

d. The levels of contract quality requirements are *additive*, i.e., if Quality Program requirements (the highest level) have been imposed, then Contractor Responsibility, Standard Inspection and Inspection System requirements are *also* included in the contract.

46.4 Government Quality Assurance.

a. Since the contractor is usually responsible for making all inspections and tests necessary to ensure product conformance, the role of Government Quality Assurance is primarily to ensure that the contractor has met its responsibilities and offers only conforming supplies and services. In the performance of those duties, Government Quality Assurance elements review contractor policies and procedures, evaluate contractors' systems, and maintain surveillance over the contractors' operations to ensure that plant personnel are complying with the contractors' stated policies and procedures, as well as perform selective Product Verification Inspections (usually in conjunction with contractor inspections). Thus, Government Quality Assurance's role (particularly in the DCAS environment) is primarily systems-oriented, and it is at that level that most of the Government's Quality Assurance attention and resources are directed.

b. The key member of the Government Quality Assurance element, from the ACO's viewpoint, is the Quality Assurance Representative (QAR). The QAR is the primary point-of-contact on quality matters for both the contractor and the rest of the Government acquisition team. The QAR also, when delegated the authority by the contract, makes acceptance on behalf of the Government of products or services offered by the contractor.

c. The QAR is often assisted by one or more Quality Assurance Assistants (QAAs), and receives staff support from Quality Engineering and Material/Processes Staff Specialists in the CAO or DCASR.

46.5 Corrective Action Requests

a. When the QAR identifies deficiencies or defects in the contractor's inspection system or quality program, he must request the contractor to make corrective action. This is necessary to ensure that product quality is not compromised.

b. There are five types of Corrective Action Requests:

(1) Method A: On-the-spot. Used when the defect is minor in nature, and the QAR considers that follow-up action is not necessary (although the QAR will record such instances on DD Form 1711, Observation Record, in order to compile a performance record).

(2) Method B: For other than minor defects, and follow-up action should be pursued. The defects are documented on DD Form 1715, Quality Deficiency Record. The DD Form 1715 will be furnished to the ACO when progress payments are part of the contract, or when a Cost of Quality Program deficiency has been noted (see reference e).

(3) Method C: Used for serious quality problems, e.g., repetitive deficiences, lack of response to Method B requests, or the contractor has been negligent in preparing or correcting its written procedures. A letter will be sent by Quality Assurance, signed by the QAR or higher-level supervisor, to the contractor's top management requesting immediate action. Copies are provided to the ACO and PCO.

(4) Method D: Used where the contractor cannot or will not comply with contract requirements. It results in a suspension of all Government Contract Quality Assurance actions at the contractor's facility.

(5) Method E: Used where subcontractors are involved and the problems are of Method C or D magnitude. The Method E request is directed to the QAR cognizant of the prime contractor, to ensure that the prime contractor pursues corrective action with the subcontractor

46.6 ACO Procedures of Corrective Action Requests.

a. *Method A Corrective Action Requests:* No ACO action required.

b. *Method B:* The ACO may be asked by Production to coordinate if delivery schedules are impacted by Method B corrective action requests; and, the QAR may also ask the ACO to intercede with the contractor regarding the importance of complying with the corrective action request/s.

c. *Method C:* Much the same as for Method B, except that the ACO should note that a Method C corrective action request indicates that the quality problems are serious and likely affect significant numbers of contracts. The ACO should not pursue independent action with the contractor on Method C requests, but should coordinate closely with Quality Assurance. The ACO may also need to coordinate with Production regarding delivery schedules, and possibly with cost monitoring and contract payment personnel (see subparagraph f. below).

d. *Method D:* Though ordinarily it is Quality Assurance that recommends the use of this method, only the ACO may issue a Method D corrective action request. The ACO should carefully analyze the documentation provided by Quality Assurance, and coordinate closely with Quality Assurance, affected PCOs, Production, cost monitoring, and contract payment personnel. Also, the ACO should seek the advice of legal counsel in cases where he deems it prudent. In particular, PCOs should be made fully aware that while the Method D is in effect, no inspection or acceptance of products or services will be made at the contractor's facility. When appropriate, concurrent recommendations for the issuance of cure notices or show cause letters should be made, but only if the PCO indicates that the supply situation will allow consideration of terminations for default. The Method D letter shall be sent via registered/certified mail to ensure receipt, and should contain, as a minimum, the following elements:

(1) The problem(s) stated in a clear, concise, and logical manner.

(2) The action taken to date and pertinent background information.

(3) Action the Government is currently taking by issuing the Method D letter, and its effective date.

(4) Action/steps required by the contractor in order for Government in-plant quality assurance to be reinstituted.

(5) Key points of contact (ACO and QAR).

e. *Method E:* For this method, the ACO cognizant of the prime contractor should coordinate with Quality Assurance to ensure that the prime contractor pursues corrective action with the subcontractor. The ACO, in such situations, should refer to subparagraphs c. or d. above as appropriate.

f. *All Methods* (except Method A): The ACO is to ensure that the proposed corrective action includes appropriate action in the areas of contract financing, cost allowances and cost monitoring.

46.7 Nonconforming Supplies or Services

a. Notwithstanding the issuance of corrective action requests (except for, of course, Method D requests), the Government may elect to accept nonconforming supplies or services on an exception basis when it is determined to be in the Government's best interest. (However, repeated tender of nonconforming supplies or services is to be discouraged through such actions as rejection, or documenting the contractor's performance record for use in future award decisions).

b. Nonconformances are categorized as:

(1) *Type I:* Supplies or services whose nonconformances adversely affect performance, durability, reliability, interchangeability, effective use or operation, weight or appearance (where a factor, as it often is with clothing and textile products) or health and safety considerations. This type of nonconformance is often referred to as "major," or "critical."

(2) *Type II:* Supplies or services with nonconformances not specified above, and that are considered "minor."

c. Only the PCO may authorize the acceptance of Type I nonconformances. Generally, the authority to accept Type II nonconformances is delegated to the CAO; but, in special cases, the PCO may reserve that authority also.

46.8 Procedures for Nonconforming Supplies or Services

a. *Type I Requests:* First, the contractor will submit such requests to the QAR for review, comments and recommendations. The QAR will record his (or her) comments and recommendations on a DD Form 1998, Comments on Waiver, Deviation or Engineering Change Request, and forward it to the CAO QA Staff Engineer for review and/or additional comments and recommendations. The package is then forwarded to the ACO; or, in exceptional cases, to the PCO with a concurrent copy to the ACO, depending upon the specific instructions received from the PCO for handling such requests.

(1) If forwarded to the ACO for review prior to submittal to the PCO, the ACO is to develop a coordinated CAO recommendation for acceptance or nonacceptance of the nonconformance. The ACO should note that ordinarily there should be a significant offer of consideration to the Government for acceptance of the nonconformance. Clarifying discussions with the contractor may be necessary; but, if a contractor refuses to offer consideration, or the amount offered is incommensurately small, that should become a factor in the CAO's recommendation.

(2) The package is then to be forwarded to the PCO for a final decision. If the PCO's decision is to accept the nonconformance, the contractor and QAR are to be advised, and the ACO is to request (or perform) cost/price analysis in accordance with paragraph 15.08-3b, and forward the results of that analysis to the PCO for use in issuance of a supplemental agreement.

(3) If the PCO's decision is to not accept the nonconformance, the PCO will so advise the ACO, who in turn will advise the contractor and QAR.

(4) In either case, the ACO should provide the QAR with copies of any correspondence or documentation received from the PCO relating to the request, and the QAR should reciprocate.

b. *Type II Requests:* The contractor's request for acceptance of the nonconformance will be submitted to the QAR, or, where one has been established, the Material Review Board (MRB; of which, the QAR may be a member). The QAR will in either case review the request, and concur or nonconcur in the categorization of the nonconformance as Type II. If the QAR does not concur in that categorization, he will so advise the contractor, and the procedures above in subparagraph a. will be followed.

(1) Usually, authority to make acceptance of Type II nonconformances is delegated to the CAO. If not, after the QAR's review, procedures similar to those for Type I nonconformances will be followed. The ACO should note that any differences in procedures will primarily arise in the area of consideration to the Government. Type II nonconformances, by definition, are "minor," and so the contractors' offers are likely to be relatively small for any particular nonconformance. Discussion will be found below at subparagraphs (3), (4) and (5) for negotiation of a "package" modification for multiple nonconformances.

(2) Where the CAO has authority to accept Type II nonconformances, the QAR will evaluate the nonconformance, and if it is found technically acceptable, will make acceptance in behalf of the Government. However, in the case of C&T items, the Quality Assurance element will forward Type II waiver requests to the ACO for approval/disapproval, in accordance with DLAM 8200.1 Part 4-106. A contract modification will be prepared by the ACO when the resultant savings to the contractor are greater than the costs to the Government of preparing and processing a modification, or when in the ACO's judgment the best interests of the Government will be served by modifying the contract. For contractors, who are authorized an MRB program in accordance with DLAR 8200.1 or MIL-STD-1520, the ACO will comply with the procedures contained in DLAR 8200.10 in obtaining adequate consideration. Contained in this DLAR—is detailed guidance for the ACO to follow in negotiating and reporting consideration obtained from low volume MRB contractors, as well as separate procedures to be followed in negotiating Memorandum of Agreement to reduce the level of MRB activity at high volume MRB contractors.

(3) Although the administrative cost to the Government of preparing and processing a modification is generally considered to be between $150 and $250, QARs will normally notify the ACO of each instance where the QAR has estimated that the contractor

has saved $50 or more in producing the nonconforming supplies or services. Where applicable, the ACO should group such QAR notifications *by contract* and whenthe total savings to the contractor on that contract exceeds the administrative costs of a modification, prepare and issue a "package" bilateral agreement reducing the contract price by a like amount.

(4) Such accumulation of contractor savings should also be made for those contracts where the PCO has retained Type II acceptance authority. When the total savings exceed the threshhold

value for issuing a modification, the PCO should be so advised and asked if he (or she) intends to issue such a modification or delegate the authority to do so to the ACO.

(5) The ACO should note also that the issuance of a contract modification for the acceptance of a Type I nonconformance offers the opportunity to gain consideration for any Type II nonconformance savings outstanding at the time. Generally, the amount of consideration for a Type I Nonconformance is substantial and by itself exceeds the administrative costs of preparing and processing a modification, and there are little or no additional costs involved with adding Type II nonconformances to such a "package" modification.

46.9 Recoupment of Reinspection Costs

a. The Contract Inspection clause set forth in FAR 52.246-2 and their DAR counterparts (7-103.5, 7-203.5, etc.) give the Government the right to charge the contractor for the Government's additional costs when:

(1) The contractor requested inspection or testing for a certain time, but the supplies or services were not ready at that time.

(2) Prior rejection made inspection necessary.

b. "Additional costs" refers to any costs over and above initial Government effort, including all time spent in actual reinspection/retesting. "Additional costs" could also include additional Government material costs (where Government material is consumed in the inspection or testing), additional laboratory fees (where the Government has contracted separately with a commercial laboratory or testing facility for the necessary inspection or testing), or additional travel costs (where Government personnel have to travel for the inspection or testing).

c. Once those costs have been identified and segregated, the ACO should pursue action to collect those charges. The preferred method of handling this collection is through issuance of a letter to the contractor requesting reimbursement for the reinspection costs accured. If the ACO judges that a letter is not appropriate, a bilateral agreement to reduce the contract price may be executed.

46.10 Quality Deficiency Reports (QDRs)/Material Deficiency Reports (MDRs)

a. For purposes of this coverage, "QDRs" and "MDRs" will be considered to be roughly synonymous terms; both refer to reports of deficiencies noted in supplies or services received by using or depot activities. Reference e. establishes DoD Joint Service procedures for handling such reports, while reference f. establishes DCAS procedures for the investigation of the reports as to cause and possible corrective or remedial action.

b. Typically, upon noting a deficiency, the user activity will complete a SF 368, Quality Deficiency Report (or equivalent form; see DLAR 4155.24 or 8260.2 for a listing of the various forms), and forward that to the Service/Agency Action Point. The "Action Point," a centralized deficiency referral activity established within each Service or Agency, will screen all QDRs before forwarding them for field investigation. The Action Point will examine the contractual and technical documentation available to that office to see if a genuine deficiency exists, and if so, whether it is the contractor's or Government's responsibility. Many QDRs are in fact resolved by the Action Points without any contract with the contractor or cognizant CAO.

c. In those cases where the Action Point cannot make an independent determination as to validity of the compliant or proper remedial/corrective action, the QDR will be referred to the cognizant inspection and acceptance activity.

d. Within DCAS, the QDR will be provided first to the CAO Quality Assurance Division Deficiency Reports Montior, who will screen all incoming deficiency reports. Those involving Transportation or Packaging problems will be referred to those elements, those involving subcontracted items will be referred to the cognizant prime CAO; and, the others which the Monitor has accepted in behalf of the CAO, will be routed to the appropriate QAR (or other assigned investigator).

e. The QAR, with the contractor's participation, will investigate the reported deficiency. Where it has been found to be validly the contractor's responsibility, the QAR will ensure that proper corrective action is implemented to preclude the deficiency's future occurrence.

f. On occasion, an "exhibit" (i.e., an item in which the reported deficiency can be found) will be requested by the QAR and/or contractor to allow for a more complete investigation. After the investigation has been completed, the CAO Monitor will follow up to ensure "exhibit" disposition instructions are received.

g. Whenever the following conditions are noted during the investigation, the CAO Deficiency Monitor will notify the ACO:

(1) The deficiency resulted from ambiguous or questionable (possibly erroneous) contractural requirements;

(2) Warranty provisions, either implied or express, apply; and, the contractor has been determined to be responsible;

(3) The contractor refuses to cooperate with the investigation;

(4) The contractor disputes the determination that it is responsible for the deficiency; or,

(5) The cause of the noted deficiency may, or *is* impacting upon current production for which progress payments are being made.

46.11 Procedures for QDR/MDR Matters Referred to ACOs

a. If the deficiency apparently resulted from ambiguous or erroneous contract requirements, the ACO should develop and forward a coordinated CAO recommendation for corrective action to the PCO. The information will be valuable to the PCO for future contracts as well as for arranging for correction of the instant deficiencies.

b. Implied (but limited) warranty provisions arise from FAR 52.246-2 in those contracts in which that clause appears. Basically, the clause makes Government acceptance conclusive (i.e., that the Government accepts all further responsibility for defects) except for cases of "latent defects, fraud, or gross mistakes amounting to fraud." Again, the ACO should develop forward a coordinated CAO recommendation to the PCO, including, as appropriate, a recommended selection from the remedies available under the clause. (The ACO should also be sensitive to the requirements of suspected fraud reporting; see Part 3 of this manual.)

c. Many contracts contain express warranty clauses that go well beyond the protections of FAR 52.246-2. As with subparagraphs a. and b. above, appropriate recommendations should be provided to the PCO for this use in resolving the situation.

d. If the contractor refuses to cooperate with the deficiency investigation, the ACO should enter into discussions with the contractor to convince it that doing so is in its best interests. First, the investigation will proceed with or without the contractor's participation. Second, the contractor's reputation for quality of product is at question. And third, cooperation and participation in the investigation permits the contractor to more fully advance its views and explanations as to the probable cause of the noted deficiency or deficiencies. There is also the possibility that the contractor may be contractually required to cooperate with the investigation, particularly if paragraph 3.5 of MIL-Q-9858A has been invoked in the contract.

e. Where the contractor disputes the Government's determination of its responsibility for the deficiency, and warranty protections apply, the ACO should develop and forward a coordinated CAO recommendation to the PCO for possible use in issuing a contracting officer's final decision.

f. Where the cause of the noted deficiency is impacting upon current production for which progress payments are being made, the ACO needs to ensure that corrective action is immediately taken by the contractor, or take appropriate action to suspend or reduce the progress payments applicable to the deficient work.

46.12 Direct Shipments from Subcontractor Facilities

a. When a prime CAO requests supporting Contract Quality Assurance (CQA), including inspection and acceptance for subcontracts that authorize direct shipments from the subcontractor to the Government receiving activity, the following items are required before the supporting CAO can undertake CQA at the subcontractor location: (This includes packaging subcontractors at remote locations.)

(1) A copy or listing of all the contractual specifications the subcontracted item must meet, or a signed statement from the prime CAO (may be signed by the Quality element) that the prime contractor's purchase order itself contains all of that information; *and,*

(2) A copy of the prime contractual instrument (or the pertinent portion thereof) authorizing acceptance and shipment from the subcontractor location, or a modification, or a letter from the prime ACO authorizing same.

b. When a prime contractor utilizes the services of a local packaging subcontractor (i.e. also within the area of cognizance of the prime CAO and usually within the same city as the prime contractor) with the expectation that final acceptance and shipment will take place at that subcontractor, the following items are required by the supporting QAR at the packaging subcontractor location:

(1) Information, through Quality channels, that all necessary prior inspections have been performed, and what the precise packaging requirements are.

(2) Where the contract itself specifies the packaging subcontractor as the point of acceptance and shipment, a copy of the pertinent portion(s) of the prime contract (again to be provided through Quality channels); or,

(3) Where the contract fails to specify the packaging subcontractor as the acceptance and shipment point, a contract modification, or a signed interoffice memorandum or letter from the ACO (may be preprinted) authorizing the QAR at the subcontractor to make final acceptance.

c. QARs will be forwarding DD Forms 1716, Contract Data Package Recommendation/Deficiency Report, to the ACO whenever they become aware a contractor plans to use a subcontractor not listed in the prime contract as the acceptance and shipment point. Upon receipt of the DD Form 1716:

(1) The ACO should then either modify the contract (if the contractor will enjoy a cost savings, and after receipt of the delegation from the PCO), or prepare a letter or inter-office memorandum to the QAR atuhorizing the use of the subcontractor's location as the acceptance and shipment point;

(2) Forward the DD Form 1716 to the PCO, noting what action the ACO has taken, and stating that the DD Form 1716 information is being provided for use in writing future contracts.

d. ACOs, of course, will have to use their judgment in authorizing acceptance and shipment at subcontractor facilities without gaining consideration from the contractor. Certainly, if the contractor's cost will be lowered by changing the acceptance and shipment point (i.e., lowered from that figured in the contractor's original bid or proposal), the Government is entitled to at least a share of the savings. In such cases, a bilateral modification should be prepared setting forth the change in acceptance/shipment point, and the amount by which the contract price has been reduced.

e. In connection with that, ACOs should note that transportation charges are almost always figured on a city-to-city basis rather than on the basis of different addresses within cities. Accordingly, changing the acceptance/shipment point from the contractor's plant to a packaging subcontractor will generally not involve a decrease in the contractor's cost. In such cases, the ACO should use the letter or IOM method to authorize the change.

47 TRANSPORTATION

47-1 References

a. FAR 47, Transportation.

b. FAR 42.14, Traffic and Transportation Management.

c. DAR Section 19, Transportation.

d. DLAM 8300.3, 3-309, Cost Price Analysis.

47-2 General. Transportation expenses comprise a large segment of the DoD procurement dollar. The transportation specialist is prepared to assist the ACO's effort to assure that supplies are shipped to and from the contractor's plants by the most economical method consistent with the urgency of the requirement. A listing of responsibilities of Transportation personnel is contained in FAR 42.1401. Administration of the clauses identified below are areas where the ACO/transportation specialist can be instrumental in reducing costs.

47-3 Guaranteed Maximum Shipping Weights and Dimensions Clause (FAR 52.247-60). This clause provides that if actual shipping weights or dimensions exceed those guaranteed in the contract, the contract price will be reduced by the amount equal to the difference between transportation costs computed for bid evaluation purposes based on contractors' guaranteed maximum shipping weights (and dimensions, if applicable) and the transportation costs that should have been used for bid evaluation purposes based on correct shipping data.

47-4 F.O.B. Origin-Carload and Truckload Shipment Clause (FAR 52.247-59) and F.O.B. Origin-Minimum Size of Shipments Clause (FAR 52.247-61). Under these clauses, the contractor agrees that shipments will be made in carload or truckload lots under stated conditions and the agreed weight of the carload or truckload will be the highest applicable minimum weight which will result in the lowest freight rate (or per car charge) on file or published in common carrier tariffs or tenders as of date of shipment. The clause further states that the contractor shall be liable to the Government for any increased costs to the Government resulting from failure to comply with these requirements.

47-5 Procedures. Since the clauses discussed in paragraphs 47-3 and 47-4 above include the contractor's agreement to a price reduction under certain circumstances, the price reduction will be effected unilaterally by DS&FM upon receipt of notification from the Traffic Management Analyst in accordance with procedures detailed in DLAM 8300.3, paragraph 3-309. DS&FM will deduct, on the basis of Transportation's computations, the amount due the Government from payment due on the contractor's invoice and advise the contractor accordingly. In the event the amount due the Government exceeds amounts due to the contractors, DS&FM will initiate action to collect from the contractor. In the event the contractor disagrees with the amount deducted and the matter cannot be resolved by DS&FM, the matter will be referred by DS&FM to the ACO for resolution.

47-6 Report of Shipment (REPSHIP) Clause (FAR 52.242-12). This clause requires the contractor to notify the consignee (receiving) transportation officer regarding large shipments. The notice is to be sent so as to arrive 24 hours prior to arrival of the shipment so that the consignee can plan use of labor, space, and materials-handling equipment. Generally, contractors send a copy of the bill of lading marked "REPSHIP for T.O." in lieu of a special report when time allows. When the REPSHIP clause is included in a contract, the ACO should discuss its impact with the transportation specialist and determine whether special emphasis should be placed on the clause during postaward orientation actions and later surveillance procedures. Failure to emphasize contractor compliance with the REPSHIP clause may result in the consignee incurring demurrage and vehicle-detention charges.

47-7 Prepayment for F.O.B. Origin Shipments or Parcel Post. The cognizant transportation officer is hereby designated as the ACO's authorized representative for the purpose of authorizing prepayment by contractor for f.o.b. origin shipments or parcel post (see FAR 42.1403-2 and 42.1404-1).

47-8 Diverted Shipments. Transportation cost analysis may be necessary when shipments are diverted to different destinations or shipping modes on F.O.B. destination contracts. The traffic management specialist will provide a rate and cost comparison for the different destinations or modes upon request. Such factors as number of shipment units, the contractor's intended mode of shipment, and information designating the altered condition(s) should be available for the analysis.

47.3 ISSUANCE OF SHIPPING INSTRUCTIONS

47.3-1 References

a. FAR 47.3, Transportation in Supply Contracts.

b. FAR 13.503, Obtaining Contractor Acceptance and Modifying Purchase Orders.

c. DFARS 47.3, Transportation in Supply Contracts.

d. DFARS 13.503, Obtaining Contractor Acceptance and Modifying Purchase Orders.

e. DAR 26-6, Issuance of Shipping Instructions.

47.3-2 Amended Shipping Instructions

a. *Processing.* ASIs are changes made to the original shipping instructions set forth in the purchase order or contract or to previous amendments to the original shipping instructions. ASIs will be issued on SF 30 and processed in the same manner as change orders (see paragraph 43.2-2); however, the extent of processing will depend upon the type of procurement instrument, point of acceptance, price/cost impact and effect on other terms or conditions of the contract or purchase order.

b. *Small Purchases.* ASIs issued against a purchase order which does not include a changes clause require bilateral agreements to incorporate the clause into the purchase order. This action is the responsibility of the PCO; however, it may be delegated to the ACO. In this event, instructions in FAR 13.503 and DFARS 13.503 will be followed.

c. *Delivery FOB Origin (FOB Source.)* ASIs issued against purchase orders and contracts providing for delivery FOB origin (FOB source) normally do not result in changes to contract price/cost or time of performance. Therefore, compliance with the terms of the ASI by the contractor will be considered to be acceptance of the change as required by paragraph 43.2-5. Such ASIs will not be definitized by supplemental agreement unless so requested by the PCO.

d. *Other Conditions.* ASIs which are not accepted by the contractor as no price/cost changes, or which affect other terms or conditions of the contract, e.g., changing destination point requiring a change in packing, will be processed as prescribed in paragraph 43.2-2.

e. *Routing within the CAO.* Request for issuance of ASIs received by the ACO will be routed immediately to the Transportation and Packaging element prior to modification of the contract, as required by a. above. This will allow evaluation by the Transportation and Packaging Specialists for possible price/cost reduction where the packing and packaging levels of protection may be reduced based on the changed destination and/or use. Also, where the levels of protection are reduced, savings could result in transportation cost due to reduced weights and change of destinations.

f. *Consolidation.* Whenever the ACO considers it advantageous, a number of ASIs may be definitized in a single supplemental agreement, or may be incorporated with another change order. However, each supplemental agreement which consolidates ASIs will not include line items applicable to more than one inventory manager. ASIs issued against a purchase order which does not contain the changes clause may, if definitization is required, be consolidated in the same manner after the PCO or ACO, if delegated, has amended the purchase order to include the changes clause. However, these ASIs should not be allowed to remain undefinitized for a period greater than 90 days.

48 PROCESSING VALUE ENGINEERING CHANGE PROPOSALS (VECP)

48-1 References

a. FAR 48, Value Engineering.

b. FAR 52.248-1, Value Engineering Clauses.

c. DAR Section I, Part 17, Value Engineering.

d. DAR 7-104.44, Value Engineering Clauses.

e. DLAM 8400.2, Contract Management Engineering Manual for DLA.

48-2 General

Special effort will be made to expedite the processing of those costs reduction proposals identified by contractors as being submitted pursuant to a VE clause of a contract. Any delay in action on a submitted VECP may result in a failure to completely realize the maximum savings potential involved.

48-3 Procedures

a. VE clauses require the contractor to submit his VECP directly to the PCO with a concurrent copy to the ACO. The ACO will request a technical review of the VECP from the Systems and Engineering element and will forward the completed technical review with recommendations to the PCO with a copy of the contractor's VECP. The buying activity will perform its technical review and render its final technical decision concerning the merits of the VECP. During this technical review phase, the Systems and Engineering element will conduct follow-up actions with the technical elements at the buying activity, to determine status of the VECP. Upon notification by the Systems and Engineering element of completion of this technical review by the buying activity, the ACO will initiate follow-up action with the PCO every ~~thirty~~ 60-75-90 days until a decision on the VECP is made or an estimated decision date is received from the PCO.

b. When requested by the PCO, the ACO will obtain a review and evaluation (Part 15.805) from the Financial Services element. The review and evaluation will include comments on the sharing arrangement for possible cost savings, if applicable. When incentive-type contracts are involved, DLAH 7800.1, Incentive Contracting Guide, chapter VI, will be utilized for determining possible price adjustments. The ACO will analyze the review and evaluation and furnish comments and recommendations to the PCO.

c. When the VECP is either approved or disapproved, the PCO will so notify the ACO. A copy of the approval or disapproval with reasons therefor will be forwarded to the Systems and Engineering element.

19.4 TERMINATION FOR DEFAULT

19.4-1 References

a. FAR 49.4. Termination for Default.

b. DFARS 49.402. Termination of Fixed-Price Contracts for Default.

c. DAR section VIII, part 6. Termination for Default.

d. DLAM 8110.1, Termination Manual for Contract Administration Services.

19.4-2 General

a. All actions on a termination for default, from the decision to terminate to the closing of the contract file, remain the responsibility of the procuring department. Consequently, all actions by DCAS functional elements pertaining to contracts terminated for default, will be in response to, and in support of, the PCO (as used in this section PCO will refer to either the PCO, or in the Air Force, the contracting officer designated for that purpose).

b. In the event that the termination for default is converted to a termination for convenience, responsibility will be transferred promptly to a TCO for processing in accordance with DLAM 8110.1 (see 90.01 for follow-up requirements pertaining to significant audit reports issued in connection with termination settlement proposals).

19.4-3 Procedures

a. *Post-Termination Actions.*

(1) COF will immediately notify the ACO upon receipt of a notice of termination for default and then make the same internal distribution of the notice as was made of the contract. However, if the contract was originally assigned to part B it will be moved by DS&FM to part A.

(2) The ACO will:

(a) Immediately advise all DCAS functional elements concerned that further activity under the contract or terminated part thereof should cease, and that all actions required to protect the Government's interests be brought to the attention of the ACO for immediate transmittal to the PCO.

(b) Notify the activities involved if support administration has been delegated.

(c) Solicit from other DCAS functional elements information as to the impact of the termination on other contracts and subcontracts at the contractor's plant(s).

(d) Maintain close coordination with the procuring activity.

(e) Advise the PCO, upon request, of the extent of Government financing, e.g., progress or advance payments, and/or the existence of performance, payment, and surety bonds or guarantors. In the event of insolvency or bankruptcy proceedings, follow the instructions and procedures in part 32.671.

(f) Assist the PCO, if requested, in protecting Government-owned property (this includes GFP and contractor-acquired property). Under ordinary circumstances the PA is responsible for ensuring protection of the Government-owned property. However, in a default termination the ACO is responsible for satisfying any extraordinary requirements to protect and maintain Government-owned property, e.g., rental of space, storage, interim maintenance services, securing substances dangerous to public health and safety and other pertinent actions. When necessary in accomplishing these responsibilities, the ACO will obtain assistance from other DCAS functional elements and/or local military agencies. If commercial services are required, the ACO will obtain required funds from the PCO. In the event the Government elects to take title to and possession of completed supplies, the contractor will be paid at the established contract price. If the Government elects to take title to and possession of partially completed supplies, the contractor must be reimbursed in an amount agreed to by both parties. If the PCO so requests, the ACO will obtain a proposal, negotiate a price, and prepare a supplemental agreement.

(g) Request the contractor, if directed by the PCO, to prepare an inventory schedule of those materials to which the Government has title under the "progress payment" clause. This situation would normally occur when the Government has exercised its rights to acquire supplies on hand or the contractor goes bankrupt. The price negotiated for the inventory will then be applied in liquidation of any outstanding progress payments.

(h) Consult with DCASR Counsel on all legal actions such as bankruptcy, access to contractor plant closed by legal action, use of extraordinary rental leases and other pertinent actions.

(i) Notify the PCO of the amount of any excess funds available for deobligation.

b. *Contract Closeout.* The ACO will assure that all actions required of the DCAS office have been completed. Closeout will be accomplished in accordance with part 4.804-9b.

90.01 CONTRACT AUDIT FOLLOWUP

90.01-1 References

a. DoD Directive 7640.2, Policy for Followup on Contract Audit Reports (12 February 1988).

b. OMB Circular A-50 (Rev.), Audit Followup (29 September 1982).

c. FAR 15.807, Prenegotiation Objectives.

d. DFARS 15.807, Prenegotiation Objectives.

e. FAR 15.808, Price Negotiation Memorandum.

f. DFARS 15.808, Price Negotiation Memorandum.

g. DLAM 8105.1, 15.807, Prenegotiation Objectives.

h. DLAM 8105.1, 15.808, Price Negotiation Memorandum.

90.01-2 General

DoD Directive (DoDD) 7640.2 implements OMB Circular A-50 by prescribing policies and outlining a management system to ensure the timely resolution and disposition of contract audit reports. The contract audit followup program requires:

a. Tracking of all audit reports which contain findings or recommendations requiring specific action by the Contracting Officer (CO) and the contractor (this includes audit reports containing "highly qualified or adverse opinion information").

b. Reporting on the resolution and disposition status of certain types of audit reports.

c. Management review/approval of CO prenegotiation objectives with respect to the proposed disposition of audit report findings and recommendations.

90.01-3 Applicability

The requirements of the contract audit followup program apply only to the CO or organization having responsibility for the contract action for which the audit recommendation was made (e.g., negotiation, definitization or settlement). Thus, DCAS ACOs and TCOs, or their organizations, are not responsible for contract audit followup actions on items to be negotiated or definitized by COs of the Military Services or other DoD agencies.

90.01-4 Performance Appraisal Requirements

a. Performance ratings of appropriate acquisition/contract management officials must reflect their effectiveness in resolving and dispositioning contract audit finding and recommendations. When the resolution and disposition of contract audits constitutes a major job function (i.e., a regular and recurring primary duty in a position), it should be included in the position description (PD) and treated in the performance plan as a critical element. If it is an important responsibility, but does not constitute a major job function, it should be included in the performance plan under an appropriate mission-related critical element. Guidance on this is set forth in DLAR 1434.3, Performance Appraisal for the Performance Management and Recognition System (PMRS), Enclosure 2, and in DLAR 1434.1, Performance Appraisal for the Performance Management System (PMS), Enclosure 2. Coverage should address the quality of audit resolutions and dispositions, not quantity. The main criteria should be (1) "Did the CO take the appropriate actions to resolve and disposition the report?" (2) "Did management take reasonable action to ensure effective audit resolution and disposition without creating undue pressure that would affect the independent decision-making authority of the CO?"

b. Positions with significant contract audit followup responsibilities are as follows:

DCASR Directors, and Deputy Directors, Contract Management
DCASMA Chiefs and Deputy Chiefs, Contract Management
DCASPRO Chiefs and Deputy Chiefs, Contract Management
Branch Chiefs, Contract Operations
Branch Chiefs, Financial Services (if appropriate)
Corporate Administrative Contracting Officers (CACOs)
Section Chiefs
Termination Contracting Officers (TCOs)
Administrative Contracting Officers (ACOs)
DCASR/DCASMAS/DCASPRO Contract Audit Followup Monitors

c. Military positions included in the above list are subject to equivalent accountability and documentation.

90.01-5 Responsibilities

a. The Executive Director, Contract Management, HQ DLA (DLA-A) is designated as the Contract Audit Followup Official responsible for managing audit followup activities within DLA's contract administration activities. He is also responsible for providing the consolidated (RCS DD-IG(SA) 1580) DLA report to the DoD Inspector General (DoDIG).

b. DCASR Directors, Contract Management are responsible for:

(1) Ensuring that procedures for resolution, disposition, tracking, and reporting on contract audit recommendations are established, maintained, and followed at all Contract Administration Offices (CAOs) and Termination Settlement Divisions.

(2) Performing staff surveillance of contract audit followup functions to ensure that all possible actions are being taken for timely resolution and disposition of contract audit recommendations, and initiate corrective action, as necessary.

(3) Providing management guidance, training, and assistance on contract audit followup matters, as required, to CAOs and Termination Settlement Divisions.

(4) Designating an individual to coordinate the contract audit followup program. This individual will be known as the Region Contract Audit Followup Monitor.

c. The Region Contract Audit Followup Monitor is responsible for: Obtaining the semiannual status reports from the CAOs and Termination Settlement Divisions, reviewing the data for accuracy, and providing guidance and corrective recommendations, as necessary.

d. Contract Management Division Chiefs are responsible for:

(1) Establishing a central focal point and system for tracking all audit reports.

(2) Ensuring that current information is maintained in the tracking system (see 90.01-6) and that semiannual status reports are provided to the Regions (see 90.01-11 and 90.01-12).

(3) Ensuring that ACOs/TCOs are taking timely actions to achieve resolution and disposition of audit recommendations within the prescribed periods.

(4) Ensuring that the ACOs/TCOs comply with the existing prenegotiation and price negotiation documentation and review requirements (see references g and h).

(5) Acting as the prenegotiation review/approving official when required by agency regulations and local guidance.

(6) Providing management assistance or advice, as required on contract audit followup matters.

e. ACOs and TCOs are responsible for:

(1) Accomplishing timely resolution and disposition of contract audit reports on actions assigned to the ACO or TCO for negotiation and definitization.

(2) Requesting prenegotiation review/approval in accordance with existing regulations and local guidance (references g and h).

90.01-6 Tracking Requirements

a. The status of all audit reports must be tracked from the date of receipt through final disposition. All reportable audit reports must be tracked via input into the centralized MOCAS system upon receipt. For nonreportable audits, the official contract file may be used for tracking purposes. Nonreportable audits may be tracked in the centralized system for management purposes, if deemed appropriate. It is imperative that status information is both current and accurate in either the contract file or MOCAS tracking system.

b. Each Contract Management Division at the CAOs shall establish a central focal point to operate and maintain a contract audit tracking system. The Termination Settlement Divisions at the DCASRs shall likewise establish a central focal point for audit reports on terminations.

c. The following information is to be entered into the MOCAS system, and kept current for all reportable audit reports:

(1) Date of Audit Report
(2) Audit Report Number
(3) Date Audit Report Received
(4) Contractor Name or FSCM Code
(5) Contracting Officer Name or Code
(6) Type of Audit Report or Code (See 90.01-13)
(7) Resolution Target Date
(8) Date Prenegotiation Objectives Reviewed/Approved (Same as resolution date)
(9) Resolution Date
(10) Disposition Target Date
(11) Disposition Date
(12) Cost Questioned/Cost Avoidance
(13) Open Pending Litigation (If Yes, Insert Docket Case No./No) (i.e., the ACO's/TCO's decision concerning audit report recommendations appealed by the contractor to the ASBCA or U.S. Claims Court or there is other ongoing judicial action resulting from the audit report findings and recommendations).
(14) Cost Sustained/Avoided (i.e., the portion of costs questioned/avoided cited in the audit report which is sustained by the ACO/TCO upon final disposition of the contract audit report).
(15) Date Deferral Action Requested (i.e., the date when the investigative agency formally requests the ACO/TCO to defer resolution/disposition action on a contract audit report. The request for deferral action shall include a statement that the contractor has officially been notified of being under investigation or that a subpoena has been issued and/or served).

90.01-7 Reporting Requirements

a. DoDD 7640.2 requires semiannual reporting on the resolution and disposition status of contract audit reports specified in paragraph F3a of the Directive (reference a). It is imperative that ACOs classify audit reports correctly. Special attention should be given to the $100,000 threshold (costs questioned/qualified and unsupported costs) for reporting of the followup status of specified, postaward contract audit reports.

b. Nonreportable audit reports include those listed in paragraph F3b of DoDD 7640.2.

c. Should a nonreportable audit report contain reportable findings, it is not to be treated as a reportable report. However, if the ACO/TCO deems it appropriate, he should request DCAA to issue a separate audit report addressing the reportable findings and recommendations. Audit reports containing only positive findings and recommendations, such as recommending that a contractor's proposed cost accounting changes be approved, are not reportable. Audits on adequacy and compliance of contractor's disclosure statements that *do not* contain an identified CAS noncompliance(s) are not reportable.

90.01-8 Definitions. (See enclosure 2 of DoDD 7640.2.)

90.01-9 Resolution

a. Resolution is a prenegotiation act. The DCAS procedures for documenting and reviewing proposed prenegotiation objectives set forth in Part 15.807, (reference g) provide the independent review for internal control purposes required by OMB circular A-50 (reference b).

b. The Supplemental Appropriations and Rescissions Act of 1980 (PL.96-304) requires the CO to resolve any differences between himself and the cognizant auditor concerning the recommendations in any contract audit report within a maximum of 6 months after issuance of the report. There are two methods for achieving resolution for reportable audits:

(1) When the ACO/TCO agrees with contract auditor on the action(s) to be taken on contract audit report findings and recommendations. For most postaward contract audits, the ACO/TCO should obtain contractor comments, and such other technical advice deemed necessary, including additional audit effort prior to formulating the Government's prenegotiation position. Additional pertinent information obtained by the ACO/TCO from the contractor shall be shared with the auditor, as appropriate. If no additional audit effort is required, the ACO/TCO shall communicate with the auditors on the proposed disposition, as necessary to reach a fully informed decision. The ACO/TCO prenegotiation documentation should indicate whether the audit recommendations were accepted or not, or whether the auditor revised them, in light of the new data submitted.

(2) In the event of disagreement, when the ACO/TCO determines a course of action after following the prescribed prenegotiation documentation and review procedures.

c. In any event, ACO/TCO compliance with the prenegotiation documentation and review/clearance procedures of Part 15.807 (reference g) shall constitute resolution.

90.01-10 Disposition

a. Generally, disposition should proceed as rapidly as possible after resolution. Reasons for slippages in disposition target dates should be annotated in the case files.

b. Specific examples of disposition actions are set forth in paragraph 7, *Disposition of Contract Audit Reports*, Enclosure 2 of DoDD 7640.2.

c. The disposition of all contract audit reports must be adequately documented. The disposition memorandum shall fully describe the disposition of all contract audit report findings and recommendations including the rationale for the actions taken. In many instances, the Price Negotiation Memorandum (PNM) (reference h) will serve as the Disposition Memorandum. However, when the method of disposition does not require a PNM, the ACO/TCO shall prepare a memorandum adequately documenting the principal factors related to the disposition of postaward contract audit reports. A copy of the PNM/Disposition Memorandum shall be provided to the cognizant DCAA auditor.

d. Each CAO shall notify in writing the cognizant DCAA office of the cancellation of any forward pricing action(s) to ensure that the final disposition of all contract audit reports is properly accounted for.

90.01-11 Tracking Information Available from DCAA, and Review of Audit Reports

a. Under DoDD 7640.2, the DCAA auditor is to attach a summary sheet to each reportable audit report issued. A copy of the summary sheet will also be provided to the DCASR Director, Contract Management. Additionally, DCAA will provide to the DCASR Director, Contract Management semiannual listings of all reportable audits issued, covering the periods of 1 Sep to 28 Feb, and 1 Mar to 31 Aug, no later than 21 days after the close of each period.

b. Although DCAA auditors identify reportable audits in the summary sheets as well as in the semiannual listings, the ultimate decision resides with the cognizant ACO/TCO. The summary sheets and the semiannual records are only to be used as additional checks on the completeness and accuracy of the tracking system's records; they are not to be relied upon as the exclusive source of information. Each CAO is responsible for the completeness and accuracy of its audit report tracking system, and none of that responsibility can be delegated to any other agency. The summary sheets and semiannual listings, are intended to be only ancillary sources of information.

90.01-12 Status Report on Specified Contract Audit Reports (RCS DD-IG(SA) 1580)

a. This report is to be submitted semiannually for the periods ending 31 Mar and 30 Sep of each year. This report is provided to the DoDIG, who in turn extracts information from it for presentation to the Congress.

b. To ensure accuracy and completeness in the preparation of this report, it is imperative that all CAOs (inclusive of the DCASR's Termination Settlement Division) and the DCASRs reconcile the current reporting period's data base with the prior reporting period's data base. Any discrepancies shall be resolved locally and/or explained via a footnote prior to finalizing the semiannual report.

c. The DCASRs are responsible for ensuring the accuracy of the reports from that Region's CAOs; and for ensuring that the reports, and a Region Status Summary, reach HQ DLA (DLA-ACM) within 15 days after the end of the applicable reporting period. In order to meet the due date, expeditious handling and dispatch by the CAOs and the DCASRs is vital. Requests for extension of the due date shall be avoided at all costs. Late submissions and/or inaccurate and incomplete reports *shall be noted* accordingly in the performance ratings of the individual responsible for the reports. (i.e., ACOs/TCOs, Section, Branch, Division Chiefs, etc).

b. Information for this report is to be extracted from the CAO's and DCASR's centralized tracking systems. The MOCAS Phase II automated system can automatically generate this report except those items/sections of the report designated to be entered manually pending completion of reprogramming efforts.

c. This report is to include only those reportable contract audit reports designated in paragraph F3a of the DoDD 7640.2.

90.01-13 Preparation Instructions for the Semiannual Status Report on Specified Contract Audit Reports, (RCS DD-IG(SA) 1580)

a. These instructions are intended to provide the DCASRs and CAOs with a guide for evaluating the completeness and accuracy of the semiannual reports.

b. Each reporting activity shall cite its appropriate activity number from DFARS, Appendix N on the line, "DoD Component" (e.g., DoD Component DCASMA Dallas (*DLA8DB*). This number will be entered manually by the reporting activities until further notice. (See Sample A).

c. The report has two major divisions: (1) "OPEN REPORTS," which covers those contract audits for which disposition has not been achieved (Sample A); and (2) "REPORTS CLOSED DURING PERIOD", which lists those audits for which disposition occurred during the current reporting period (Sample B).

d. "OPEN REPORTS" separates contract audit reports into five categories:

(1) "SECTION A—OVERAGED REPORTS:" These are contract audits that are over 12 months old (from date of issuance) which have not yet achieved disposition as of the end of the reporting period. A brief status report on each overage audit report shall be appended to this section.

(2) "SECTION B—REPORTS 6-12 MONTHS OLD:" These are contract audits that are not yet considered overage. This section is useful in identifying those contract audits to which attention can be focused in order to prevent an overage condition from arising.

(3) "SECTION C—REPORTS LESS THAN 6 MONTHS OLD:" These are contract audits whose date of issuance falls within the current reporting period.

(4) "SECTION D—REPORTS IN LITIGATION:" These are contract audit reports for which ACO/TCO final decisions have been issued, and those decisions have been appealed to the ASBCA, the U.S. Claims Court, or there are other judicial actions being taken. Reports in this section shall not be included in Sections A, B, C, or E of the report.

(5) "SECTION E—REPORTS INVOLVED IN CRIMINAL INVESTIGATION:" These are contract audit reports involved in criminal investigations and the cognizant investigative agency has formally requested the ACO/TCO to defer resolution and/or disposition of audit recommendations (see 90.01-6c(15)). Reports in this section shall not be included in Sections A, B, C, or D of the report. This entire section will be entered manually until further notice. (See Sample A).

e. The column headings on "OPEN REPORTS" are self-explanatory except for:

(1) "REPORT DATE:" This refers only to the date of issuance of the contract audit (i.e., the date stamped on the audit report itself), and not to the date of receipt by the CAO or DCASR.

(2) "CONTRACTOR NAME:" The use of abbreviations should be strictly avoided whenever possible. Many abbreviations enjoying a local currency have no meaning whatsoever to the larger audience for which the (RCS DD-IG(SA) 1580) report is intended.

(3) "TYPE AUD" (TYPE OF AUDIT): Only the following codes will be used in lieu of spelling-out the type of audit on the report:

Code	Type of Audit
A	Estimating System Survey
B	Accounting System Review (Does not include reviews done merely for the purpose of establishing eligibility for the receipt of progress payment or reviews done for assessing the validity of paid progress payments; these are not reportable.)
C*	Internal Control Review
D	Defective Pricing Review
E	Cost Accounting Standards Noncompliance Review
F*	Operations Audit
G*	Incurred Costs
H*	Settlement of Final Indirect Cost Rates
I*	Final Pricing
J*	Terminations
K*	Equitable Adjustment Claims
L*	Hardship Claims
M*	Escalation Claims

* Costs questioned/qualified must equal $100,000 or more, except for Code H when the report covers

auditor-determined indirect cost rates forwarded to the ACO for resolution and disposition.

(The above codes, and "O" (Other) may be used in the centralized tracking system. However, "O" coded audits should never appear in the (RCS DD-IG(SA) 1580) report).

(4) "COSTS QUEST/AVOIDANCE" (COSTS QUESTIONED/AVOIDANCE): The amount questioned in the audit report that the ACOs/TCOs have the responsibility and authority to resolve and disposition. It includes qualified and/or unsupported costs.

(5) "DATE DEF ACT RQST" (DATE DEFERRAL ACTION REQUESTED): When an audit report is involved in a criminal investigation, this refers to the date an investigative agency formally requests the ACO/TCO to defer resolution and or disposition of audit recommendations. The column heading and deferral date(s) will be manually entered until further notice. (See Sample A).

(6) "RES/URES" (RESOLVED/UNRESOLVED): All contract audits over 6 months old should have already been resolved (see 90.01-8 and 9 for information on resolution). A "U" entered for any contract audit over 6 months old indicates a violation of law (PL 96-304) and policy, and could become the basis for disciplinary action against the individuals concerned. If a "U" is entered, resolution target date shall be entered under "Resolution Target/Actual Date." If an "R" is entered, an actual resolution date shall be entered under "Resolution Target/Actual Date." For purposes of the semiannual report, any resolution achieved in less than 30 days shall be confirmed by the cognizant ACO. A general statement to this effect in the DCASR's transmittal letter is acceptable. Further, any resolutions or resolution target dates in excess of the 6 months statutory, limitation shall be explained via a footnote in the semiannual report.

f. "REPORTS CLOSED DURING PERIOD" lists the contract audit reports that have been dispositioned into two categories:

(1) "SECTION A–REPORTS LISTED AS OVERAGED IN PRIOR REPORT:" These are contract audits that were listed in "Section A of Open Reports" in the prior semiannual report.

(2) "SECTION B–OTHER REPORTS CLOSED DURING PERIOD:" Largely self-explanatory. (Note that a contract audit report can be resolved and dispositioned within the same reporting period. These audits need appear only in this Section; they need not appear in "OPEN REPORTS").

g. The column headings on "REPORTS CLOSED DURING REPORT PERIOD" are mostly self-explanatory, except for:

(1) "COSTS QUEST/AVOIDANCE" (COSTS QUESTIONED/COST AVOIDANCE): These dollar amounts receive the most attention and scrutiny by the DoD Inspector General and the Congress. They must accurately reflect the auditor's questioned costs/cost avoidance.

(2) "COSTS SUSTAINED/AVOIDED": These dollar amounts reflect that portion of the costs questioned/avoidance that was sustained/avoided by the ACO/TCO during negotiations and or final settlement. For purposes of this report, the reported costs sustained/avoided cannot exceed the costs questioned/avoidance amounts.

h. SUPERSESSIONS: Costs questioned/sustained shall be reported as "zero" when a report is superseded, replaced, or incorporated into a new (superseding) report. In such cases, an asterisk should print prior to the new (superseding) report number under the "AUDIT REPORT NUMBER" column, and the superseded audit report number(s) should be listed right below it, designated with a "SUP." The new (superseding) report number with its data elements should also appear in the "OPEN REPORTS," along with the superseded report number annotated with a "SUP". To avoid cluttering the data base only "surpesessions" occuring during the current reporting period will be shown in the semiannual report. Thus, any asterisks (*) preceding the superseding (new) audit report numbers and the superseded (old) audit report numbers designated with "SUPs" that were shown in the prior semiannual report should be manually deleted prior to submission of the next semiannual report. (See Samples A and B).

REPORT NUMBER: UNAF010A

STATUS REPORT ON SPECIFIED CONTRACT AUDIT REPORTS
(REPORT CONTROL SYMBOL DD-IG(SA) 1580)

OPEN REPORTS
FOR PERIOD ENDING: 87 SEP 30
DOD COMPONENT: DCASMA DALLAS (DLA8DB)

AUDIT REPORT NO.	REPORT DATE	CONTRACTOR NAME	TYP AUD	COST QUEST/ AVOIDANCE	DATE DEF ACT RQST	PND LIT	RES/ URES	RESOL TAR/ACT DATE	DISPOS TARGET DATE
A. OVERAGED REPORTS (OVER 12 MONTHS)									
11616G441267	86 06 27	G. D. ABILENE	E		N/A	N	R	86 10 20	87 12 31
11616G442272	86 05 12	GENERAL DYNAMICS	E		N/A	N	R	86 06 20	87 12 31
11617E442037	86 09 26	ELECTROSPACE SYSTEM, INC.	E	$1,333,251	N/A	N	R	86 11 20	87 12 31
11617E445038	86 09 23	ELECTROSPACE SYSTEM, INC.	E		N/A	N	R	86 11 15	87 12 31
B. REPORTS 6-12 MONTHS OLD:									
11617G442143	86 11 14	TRW OPTOELECT	E		N/A	N	R	86 12 20	87 11 01
C. REPORTS LESS THAN 6 MONTHS OLD:									
*11614I240260 SI 11614I240260 SUP	87 06 04	ELECTROSPACE SYSTEMS, INC.	A	333,720	N/A	N	R	87 09 15	88 05 30
11617E110080	87 05 28	ELECTROSPACE SYSTEMS, INC.	C	162,000	N/A	N	R	87 06 30	88 05 15
11617E441115	87 05 18	ELECTROSPACE SYSTEMS, INC.	E		N/A	N	R	87 06 21	88 05 22
35117G240419	87 07 31	G. D. ABILENE	A	49,990	N/A	N	R	87 09 15	88 06 31
35313E442003	87 09 11	ELECTROSPACE SYSTEMS, INC.	E		N/A	N	U	87 10 19	88 09 01
D. REPORTS IN LITIGATION.									
11615G442271	85 02 14	SAMPLE A	E		N/A	BCA12345	R	85 06 12	88 07 30
35114G420031	85 06 10	SAMPLE B	D	531,000	N/A	BCA25347	R	85 10 07	88 08 25
E. REPORTS INVOLVED IN CRIMINAL INVESTIGATION:									
11616E42005	87 09 10	SAMPLE C	D	220,590	87 09 25	N	U	88 05 05	88 08 15

SAMPLE A

REPORT NUMBER: UNAF010B

STATUS REPORT ON SPECIFIED CONTRACT AUDIT REPORTS
(REPORT CONTROL SYMBOL DD-IG(SA) 1580)
REPORT CLOSED DURING PERIOD

REPORT PERIOD ENDING: 87 SEP 30
DOD COMPONENT: DCASMA DALLAS (DLA8DB)

AUDIT REPORT NO.		REPORT DATE	CONTRACTOR NAME	TYP AUD	DATE OF DISPOS	COST QUEST/ AVOIDANCE	COSTS SUSTAINED/ AVOIDED
A. REPORTS LISTED AS OVERAGE IN PRIOR REPORT:							
NEGATIVE REPORT							
B. OTHER REPORTS CLOSED DURING PERIOD:							
*11614I240260	SI		(SEE SECTION C. OPEN REPORTS)				
11614I240260	SUP	86 08 06	ELECTROSPACE SYSTEMS, INC.	A	87 06 04	-0-	-0-
11617I110098		87 02 17	LOCKHEED SUPPORT SYSTEM	C	87 05 17	$150,000	$150,000
11617I442084		86 12 29	SIMUFLITE MILITARY OFFSITE	C	87 04 28	-0-	-0-
11617I442085		86 12 29	SIMUFLITE TRAINING INTERNATIONAL	E	87 05 06	-0-	-0-
71917A160330347		87 02 02	REN CORPORATION	E	87 06 30	$240,000	$240,000
*71917A160436343	SI	(NOT IN OPEN REPORTS, CLOSED DURING PERIOD)					
71917A160436343	SUP	87 02 05	INSON IND INC	C	87 04 05	-0-	-0-
71917A160436343	SI	87 04 05	INSON IND INC	C	87 09 18	$631,000	$591,000

SAMPLE B

90.02 TRAVEL BY CONTRACTOR PERSONNEL OUTSIDE CONUS

90.02-1 References

a. DAR 1-321, Procurements Involving Work to be Performed in Foreign Countries by U.S. Contractors.

b. DLAM 8300.3, Transportation and Packaging Manual for Contract Administration Services.

c. DoD 5220.22-R, Industrial Security Regulation.

90.02-2 General. Contractor personnel are often called upon to visit agencies and activities outside CONUS in compliance with contract requirements. The ACO should assist the contractor in processing necessary special orders, theatre clearances, visit requests, State Department Export Licenses, or export authorizations.

90.02-3 Procedures

a. The contractor requiring overseas travel of employees will complete Part one of DLA Form 437, Request and Authorization for Overseas Travel—Contractor Personnel, and forward in duplicate to the ACO as early as possible, but at least 30 days prior to the date commencement of travel is desired. If the visit will involve disclosure of classified defense information, the following necessary additional processing requirements will be applicable:

(1) Visits to U.S. Government activities outside the United States will be processed in accordance with DoD 5220.22-R, Section III, paragraph 3-203.

(2) Visits to foreign government activities or foreign firms will be processed in accordance with the applicable subparagraphs under DoD 5220.22-R, paragraphs 3-400.

b. It is the responsibility of the ACO to receive requests for overseas travel of contractor personnel, obtain the approval of the PCO if not provided in the contract, and approve requests when contractually appropriate. When the visit will involve the disclosure of classified information, a request will be submitted to DISCO for personnel security clearance verification.

c. The ACO will assure that travel is necessary, proper, and applicable to performance under the contract cited, obtaining PCO approval when necessary. Upon completion of part II of DLA Form 437, and after receipt of approval for the visit from the U.S. overseas activity to be visited, the ACO will forward the original DLA Form 437 to the Transportation Operations Branch for completion of travel arrangements. The ACO will utilize the services of DISCO in completing all clearance arrangements.

d. If the contractor is visiting a foreign government activity or a foreign firm, which involves disclosure of classified information, the U.S. activity overseas who is arranging the visit (OISI MAAG, Defense Attache, or Unified Command) will notify the ACO directly of approval or disapproval to visit the foreign activity.

e. When contracts contemplating overseas travel by contractor personnel are received, procedures for processing such requests should be discussed during PAOCs with contractors (see part 42.5).

90.03 CONTRACTS FOR THE MAINTENANCE, OVERHAUL AND REPAIR OF SUPPLIES AND EQUIPMENT

90.03-1 Purpose. This part is intended as a guide to administering contracts for maintenance, modification, overhaul, or repair (referred to as M&O, PDM/SDLM). Its objective is to highlight those aspects of these types of contracts which require special management attention and to supplement contract provisions and procedures, but not to take precedence over such contract provisions.

90.03-2 General

a. Contracts of this type range from the relatively simple to the most complex to administer. The degree of complexity depends on the nature of the item to be repaired, and the scope of work required. A contract for the overhaul of a definite quantity of "black boxes", for example, may require a minimum of administrative effort, whereas a PDM/SDLM contract on a major aircraft requires a maximum of management effort throughout most functional areas of the CAO.

b. Procuring activities use a wide variety of contract types and pricing provisions for this type of work. Contracts normally require the ACO to negotiate prices or manhour allowances for work which is not definitized in the basic contract, and to negotiate prices or determine reasonableness of cost for contractor furnished material. Standard Form 30 will be used to set forth the additional work to be done (see FAR 43-301(a)(iii)). These documents may be referred to as work requests, job orders, task orders, work orders, orders or calls, and the contract will prescribe the manner in which the documents are to be utilized.

c. As soon as the ACO learns of a pending or actual contract award, a maximum effort should be made to plan the management of the contract at the earliest possible date. To the extent possible, procedures required and functional assignments of responsibility should be agreed upon and put in written form. Requirements for coordination with the buying activity on contract administration matters, including the necessity of the buying activity assigning personnel at the plant to assist the CAO, in areas not assigned in accordance with FAR 42-302, should be determined at an early date, and necessary coordination action should be initiated.

90.03-3 Actions to be Taken by the ACO and Other Functional Representatives on Receipt of the Contract

a. The ACO should perform a thorough review of the contract to determine the degree of administration and management effort required. He should meet other functional area specialists and CAO management personnel if required, to review the contract requirements and plan for personnel and other resources essential to proper contract administration. Consideration should be given to whether all or part of the contract administration team need be physically assigned to work at the contractor's plant.

b. Review of the contract should consider the following provisions and requirements, as applicable:

(1) Organizations authorized to order against the contract and/or ship articles for the overhaul/modification.

(2) Conditions under which orders may be issued by ACO.

(3) Fund limitations such as:

(a) Total funds committed or obligated.

(b) Separate funds cited for labor, material, and parts.

(c) Dollar value of individual orders which may be placed by ACO.

(d) Minimum dollars that may be expended by the Government.

(e) Maximum dollars that may be expended under the contract.

(f) Limitations on Government's obligation under the contract. Such limitations are found, for example, in contracts which have been funded on an estimated basis.

(4) Requirements for contractor local purchase of supply support.

(5) Terminal date for issuance of orders.

(6) Input and output delivery schedules.

(7) Complex technical requirements affecting Production, Transportation and Packaging, and Quality Assurance, such as first article inspection, engineering services or unusual specification requirements.

(8) Contractor reporting requirements for such matters as number of reparables received and shipped or condition of articles at the time of teardown.

(9) Government property:

(a) Property provisions for nonstandard requirements.

(b) Special property provisions to determine scope and requirements relative to acquisition, stock levels, reporting, and disposal of Government property.

(c) Ensure that contractor has all necessary catalogs, stock lists, and publications needed to perform the contract.

(10) Contractor-acquired property:

(a) Provisions for acquisition of parts and material by the contractor for application to the contract end item.

(b) Determine if stock lists, parts catalogs, and related publications are available to the contractor and the ACO for use in determining reasonableness of prices.

(11) Pricing provisions:

(a) Fixed-price for services to be performed.

(b) Fixed labor rates with or without loading factors.

(c) Elements of total price which must be negotiated, such as labor hours, contractor-furnished parts, and packaging materials.

(d) Determine the need for a forward pricing agreement for labor rates, labor hours, and material pricing applicable to elements of the contract which must be negotiated.

(12) Provisions for accomplishing work which falls within the scope of the contract, but which could not be identified at its inception. (This is normally referred to as "over and above work," and may be classed as inseverable and severable. Inseverable work is that which must be accomplished to satisfactorily complete the work called for by the basic contract. Severable work is closely related to the work being performed under the contract, but if not done, it does not preclude performance of the basic contract work. Inseverable work must be ordered by the Government. Conversely, the Government has no obligation to order severable work.)

(13) Coordination required with PCO and his representative prior to approval of "over and above work." (At times the PCO may have a representative stationed at the worksite for the purpose of reviewing and authorizing "over and above work" requirements.)

(14) Period allowed for submittal of contractor proposals for "over and above work."

c. The ACO will convene meetings with CAO functional specialists as necessary to ensure that all of the contract administration team members are aware of their individual and collective responsibilities. A postaward orientation conference is required with compulsory attendance by CAO functional specialists on the contract administration team. However, the requirement for a conference may be waived for some contracts (see paragraph 42.5-5d). On a major contract, the conference should be attended by the CAO functional specialists and those representatives of the buying activity who will provide technical and logistical support, interpret contract work scope, etc. Such conferences may be of several days' duration and require review of such contractor data as organizational charts, lists of key personnel and their functions, scheduling plans, administrative controls, operating methods and procedures, and availability of required skills. Contract specifications and work sequence procedures, as well as procedures for obtaining material and supply support, processing and approving work requests (job orders), processing purchase orders, and preparing and distributing reports required by the contract, as applicable, should be thoroughly reviewed during the conference. To maintain the high degree of coordination necessary for successful contract administration, periodic meetings should be scheduled as necessary to examine progress being made, and to review and resolve problems arising during contract performance.

d. The ACO shall enter on the Postaward Conference Record (see paragraph 42.5-4b(1)(f)), when applicable, those actions taken or to be taken to ensure a clear-cut effective system for processing work requests that addresses both contractor and Government responsibilities. The work request system shall cover all steps in the process, i.e., discovery and recording of the defect, determining need to rework, classification of defect by contract pricing category, estimating manhours required for rework, negotiating the price(s), certification that the rework was accomplished.

e. When the contract calls for the ACO to issue, price, negotiate or definitize orders, he should establish controls which provide visibility over status of these orders. Such controls should encompass as a minimum:

(1) The ability to determine overall fund status at any given time.

(a) Extreme care must be exercised in this area. (Although each contract has its own combination of fund limitations, it will be found that those listed in subparagraph 90.03-3b(3) above are quite common.) When such contracts are bulk funded the ACO will be alert for possible excess or insufficient funds and take action as appropriate (see Part 32.75).

(b) Coordinate with Comptroller as necessary to assure that the obligated amounts recorded by them are in agreement with those amounts obligated by the ACO. The CAR should be utilized as a good management tool regarding contract obligations.

(2) An Unpriced Order Control Register (DLA Form 1516 or a computerized equivalent).

(3) The ability to determine the status of receipt of GFP. (The contractor's procedures should outline controls as to what property is to be requi-

sitioned, stocked, and the status of such requisitioned items.)

(4) Procedures that will ensure that the factors listed below have been considered at the time of issuing the work request:

(a) Quantity to be reworked is authorized by contract.

(b) Realistic delivery schedule has been established. Where numerous work orders and job orders, involving identical items have been issued, the compounded required delivery schedules may tax the capacities of the contractor. In these instances, coordination with the PCO and the Production Division to effect "master delivery schedules" for these particular end items should be considered.

(c) Man-hours, materials and parts are fair and reasonable (as determined by the Industrial Specialist/Engineer).

(d) Necessary specifications or technical publications are available.

(e) Whether all GFP listed on the work request is physically on-hand.

(f) That the QAR/cognizant engineer has verified such things as proper items of "over and above work," necessity of work, repair in lieu of replacement as the most economical method for use, and adequacy of quality control procedures.

(g) Acceptability of the unit and total prices.

(5) Review of labor to determine which categories are direct and indirect. If the review discloses that any type of labor charged direct is already included in the overhead pool, the necessary deletions should be made from the direct charges to arrive at realistic hourly rates. This is of the utmost importance since the price of the individual orders will ordinarily be negotiated on the basis of hourly rates multiplied by the number of hours estimated for each category of direct labor. Consideration should be given to negotiating forward pricing agreements with contractors having substantial repetitive M&O contracts, especially where certain elements such as contractor acquired material, labor hours, and labor rates require negotiation by the ACO or PCO.

(6) Ensuring that the contractor uses Government supply channels to obtain parts and materials whenever possible. Timeliness of requisitioning actions will avoid "work stoppage" conditions and offset contractor procurements in order to meet delivery schedules. Ensuring that prices paid by the contractor to obtain items from commercial sources when authorized, are fair and reasonable. When ACO approvals are necessary to permit the contractor to purchase materials from commercial sources, reviews should be obtained from other functional elements to support these approvals.

f. The above items, to be considered when reviewing work requests, are a guide only, and the ACO will conduct his review to the extent and in such a manner as to assure that the work request to be issued is in the best interests of the Government and in accordance with contract terms. The ACO should assure that tasks are not priced as small individual functions, except when this is necessary for an appropriate analysis. On the other hand, tasks should not be priced as single undertaking without breakdown when the absence of a breakdown tends to complicate, if not make impossible, an appropriate review of the manhours involved. As an example, several individual jobs which conceivably can and should be accomplished by a mechanic in the accessory section of an installed engine should be priced as one overall undertaking rather than a series of individual jobs. Additionally, if three different jobs in the accessory section of one engine were separately priced, the prices would be inflated as consideration should be given to each item as related to job setup times (time to and from the job areas and arranging work stands), whereas, if these jobs were appropriately grouped, consideration would be given to setup times only once rather than three separate times.

90.03-4 Functional Responsibilities. Duties of the functional specialists on the contract administration team will vary according to the contract type, scope, and complexity, and to some degree, will be based on the knowledge and experience of assigned individuals. As team leader, the ACO should employ the expertise of these specialists to the utmost for reviews to support the various approvals required. The following is the typical breakdown of duties by functional area:

a. *ACO*

(1) Participate in preaward surveys of contracts as requested by the preaward monitor or directed by CA management. The ACO's participation is in addition to that of the financial analyst and the property administrator.

(2) Initiate and chair the PAOC.

(3) Request purchasing and estimating system reviews, if not previously accomplished, when warranted by the volume of contractor purchases (see parts 15.811 and 44.3).

(4) Assure availability of all specifications/procedures referenced in contract.

(5) Establish system for work request review.

(6) Approve work requests (job/task orders) where delegated, based on the work request reviews.

(7) Maintain order register.

(8) Maintain fund status controls.

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(9) Review and approve contractor's request for local purchase of CAP.

(10) Approve stock levels, when required by contract, based on documented review recommendations.

(11) Request price/cost analysis of contractor proposals (authorized with requests) in accordance with section 15-805 when necessary.

(12) Conduct price negotiations and definitize work requests (orders). (See 90.01 for audit follow-up and 90.16 for Board of Review requirements).

(13) Call periodic progress meetings with the contractor and CA team members, including buying activity representatives, when appropriate.

(14) Consent to purchase orders/subcontracts, as applicable. Be sure that materials are not available from Government supply sources and are authorized by contract, not in excess of requirements, and are reasonably priced.

(15) Assure compliance with contract reporting and date submission requirements.

(16) Approve contractor invoices/vouchers based on sufficient review to determine reasonableness. In the case of billings for material, determine that the material was authorized, contractor-furnished, and not in excess of requirements.

(17) Distribute work requests/orders pursuant to contract requirements.

b. *Production*

(1) Clarify delivery schedule and assure its proper interpretation.

(2) Review contractor's plan for production and progress control.

(3) Review and evaluate engineering aspects of changes in scope of work and submit comments and recommendations to the ACO.

(4) Establish plan for Government surveillance.

(5) Identify "critical parts" which could delay program.

(6) Monitor contractor's requisitioning and purchasing of "critical parts."

(7) Monitor contractor's handling of MRL, and coordinate with buying activity, PA, and QAR.

(8) Evaluate engineering aspects of contractor proposed modifications to work statements.

(9) Coordinate with PA on adequacy of stock levels.

(10) Notify buying activity inventory manager of shortages of critical parts or reparables and expedite receipt from Government sources.

(11) Evaluate contractor's efforts for allocability and reasonableness.

(12) Assure necessary ACO, or other approvals required by contract, are obtained before contractor purchases items which had been scheduled to be Government-furnished but which are not available through supply channels.

(13) Assure timely teardown and identification of needed repairs and material support to accomplish the repairs.

(14) Review contractor requests for "over and above work" and submit comments to ACO as to reasonableness of manhours and materials proposed.

(15) Review and evaluate changes in scope of work and submit comments and recommendations to ACO.

(16) Assure proper preparation and timely delivery of data and reports in accordance with FAR 42.11 and contract requirements.

c. *Property Administration*

(1) Accomplish procedures and functions prescribed in DLAM 8135.1, Property Administration Manual for Contract Administration and FAR 45.

(2) Assist in performing special reviews in areas such as material purchase and stock level approvals.

(3) Review contractor's requisitioning procedures to assure quality and timeliness of requisitions, proper use of priority designators and adequacy of cancellation procedures.

(4) Review contractor's material control records to assure the data elements (stock numbers, unit of issue, unit price, replacement expendability, recoverability and replacement codes, etc.) are recorded and kept current.

d. *Quality Assurance*

Accomplish procedures and functions outlined in DLAM 8200.1, appendix B, as applicable.

e. *Transportation and Packaging*

(1) Evaluate and assure the adequacy and correctness of contractual transportation terms—including shipment instructions.

(2) Evaluate and assure the adequacy of preservation-packaging, packing, and marking instructions.

(3) Monitor contract terms relating to guaranteed shipping weights and dimensions and requirements for carload/truckload or minimum size shipments.

(4) Assure compliance with Common Carrier Tariff rules and regulations.

(5) Provide technical assistance and detailed instruction to contractors in the preparation of IPE and GFP for shipment and storage.

(6) Provide technical assistance in the preparation of packaging, handling and transportation deficiency reports on GFP received by contractors.

90.03-5 Coordination During Contract Performance

a. The administration of M&O contracts can require an extraordinary degree of coordination between the ACO and other technical specialists within the CAO. Extension acquisition and use of Government property may be necessary and the items should be on hand in appropriate amounts to permit accomplishment of repairs and meeting the delivery schedule. Such contracts often specify periodic reporting of Government property consumed and items delivered. These particular requirements may necessitate closer coordination between the ACO, the PA, IS, and QAR in connection with matters of contractor performance related to those respective technical areas of administration.

b. In those instances where the maintenance and overhaul contract covers a critical program or complex equipment, program status meetings are mandatory. They should be held on a regular basis (weekly, biweekly, or monthly as the circumstances dictate) and should include not only the ACO team but also the Division Chiefs and the DCASMA/DCASPRO Commander. Minutes of the meeting to include action items and action designees should be prepared by the ACO chairman and distributed to all attendees in addition to the official file.

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90.04 NASA NEW TECHNOLOGY CLAUSE

90.04-1 Reference

a. NASA/FAR Supplement 84-1, New Technology Clause.

b. NASA Procurement Regulation 9.101-4, New Technology Clause.

90.04-2 General. The NASA New Technology Clause requires the contractor to promptly report all items of New Technology (inventions, discoveries, improvements, and innovations whether or not they are patentable) developed under the contract, and to actively search for and identify the items of new technology to be reported. The responsibility of the CAO is normally limited to reviewing the contractor's plan for implementing a new technology reporting program and for assuring that he provides the required reports. The contractor's program may result from a formal plan incorporated in a contract, a formal plan incorporated into intracompany procedures, or an informal plan. The detail of his plan could vary with the complexity of the contract item, the dollar value of the contract, and the extent to which the contractor desires to participate in the program. Since the new technology clause requires subcontractors to submit reports directly to the NASA contracting officer, the procedures shown below are equally applicable when a NASA subcontract is assigned for supporting administration.

90.04-3 Procedures

a. When the ACO is assigned a NASA contract containing the new technology clause, he will:

(1) Determine whether the contractor has had prior experience with the clause. If the contractor has not had recent experience with the new technology program, the ACO will contact the contractor to assure awareness of the requirements of the clause. If the ACO determines that a PAOC is required to clarify the responsibilities of the contractor and the various Government representatives administering the contract, he will arrange for such PAOC. Functional specialists assigned responsibility for surveillance of performance under this contract will participate. The NASA PCO and Technology Utilization personnel will be invited to attend.

(2) Arrange for the Engineering element to review the contractor's plan for implementing the new technology clause.

(3) Assure that the contractor is aware of his responsibilities for ensuring subcontractor compliance with the new technology clause and has established a procedure for flow down of the clause in subcontracts. Also assure that the subcontractor certifies to the PCO or the designated TUO his compliance with the new technology clause in the subcontract.

(4) The ACO will receive an alert annually from the effective date of contract until it moves to section 2. The ACO shall ensure that a suspense is established by the Mechanized Alert System (Coded Remark 21) as described in A-600. A 60-Day Closeout Alert will be utilized as a suspense document to assure contractor submission. The contractor will normally submit the reports required by the new technology clause directly to the TUO. The PCO will normally require the contractor to provide a copy of all negative reports and transmittal letters to the ACO.

(5) Support the PCO or designated TUO in the reviews of contractor's new technology reporting procedures, reports, and records, as requested.

(6) As necessary, advise the PCO upon receipt of information from the assigned functional specialist that the contractor may not be in compliance with his own new technology program.

(b) Production or Quality assurance functional specialists, in the performance of their normal responsibilities for maintaining surveillance over contractor quality assurance performance, will:

(1) Review the contractor's plan for implementing the new technology clause.

(2) Advise the ACO when the contractor may not be complying with his new technology program.

(3) When requested, review copies of reports submitted by contractors under the new technology clause.

90.05 PARAMETRIC COST ESTIMATING

90.05-1 References

a. FAR 15.8, Price Negotiation.

b. DFARS Manual for Contracting Pricing (ASPM) No 1 (15 Sep. 75), Chapter 2D, Estimating Techniques and Tools for Quantitative Measurements.

c. DAR 3-807, Pricing of Negotiated Contracts.

d. ASPM No. 1, Armed Services Pricing Manual, Chapter 2D, Estimating Techniques and Tools for Quantitative Measurements.

e. DLAM 8105.1, Part 15.805, Price/Cost Analysis, and Part 15-809, Forward Pricing Rates, Factors, and Formulas.

90.05-2 Scope. This part provides guidance for evaluating elements of cost in contractor price proposals based on parametric cost estimating techniques. Responsibilities and related procedures for reviewing, evaluating, and monitoring cost estimating relationships (CERs), parametric cost models, and related Forward Pricing Rate Agreements (FPRAs) are included.

90.05-3 Definitions

a. Parametric Cost Estimating. Parametric Cost Estimating (Parametrics) is a technique which uses one or more cost estimating relationships or a parametric cost model to estimate direct or indirect costs associated with the development, manufacture, or modification of an end item.

b. Cost Estimating Relationship. A cost estimating relationship expresses a quantifiable correlation between certain system costs and other system variables either of a cost or technical nature. These latter elements, considered the independent variables, are used to estimate the occurrence of the dependent variable. A CER may be cost-to-cost such as estimating overhead dollars using engineering labor dollars as a base or estimating equipment installation costs using equipment acquisition costs as a base. A CER may also be cost-to-noncost such as estimating engineering labor hours using the number of engineering drawings as a base or estimating maintenance labor hours using square feet of factory space as a base.

c. Parametric Cost Model. A parametric cost model is a group of cost estimating relationships used together to estimate entire cost proposals or significant portions thereof. These models are often computerized and may include many interrelated CERs, both cost-to-cost and cost-to-noncost. Some models use a very limited number of independently estimated values and a series of interrelated cost-to-cost and cost-to-noncost estimating relationships to predict complex proposal cost structures.

90.05-4 General

a. Parametric cost estimating is a technique used by both contractors and the Government in the planning, budgeting, and performance stages of the acquisition process. The technique is used by contractors to expedite the development of cost estimates when discrete estimating techniques would require inordinate amounts of time and resources and would produce similar results. Reliance on properly developed and carefully evaluated CERs and parametric cost models to produce realistic cost estimates can save the Government time and resources in the evaluation and definitization cycle of the proposal/contract.

b. The concept includes the use of cost-to-cost CERs such as engineering labor overhead rates and material overhead rates which, when reviewed using traditional evaluation criteria, are considered valid estimators by the Government. However, the technique also uses cost-to-noncost CERs which require additional analysis to determine their validity and acceptability as estimating tools.

90.05-5 Procedures

a. Responsibilities. The field pricing team, described in Part 15.805-3a(1), has the responsibility for reviewing and evaluating proposed costs including those estimated through the use of CERs and parametric cost models. All costs should be reviewed following the procedures and guidance for pricing support included in Parts 15.805-3a(2) through (4) and 15.805-3b(1) through (3). However, when evaluating cost-to-noncost CERs and parametric cost models, the team members must also consider the evaluation criteria in Part 90.05-5b below.

b. Criteria for Developing and Evaluating Parametric Cost Estimates. To ensure that costs estimated using cost-to-noncost CERs closely represent costs to be incurred in the area, each CER should be developed and evaluated using the following criteria.

(1) Cost-to-noncost estimating relationships must be logical. During contract performance, many factors may cause a cost to be incurred. All of these possible causes of cost incurrence should be considered before a CER is developed. To establish a valid CER, the factors that make the most significant contribution to incurrence of a cost must be isolated and analyzed to determine which are the most logical predictors or drivers of a related cost. Statistical testing, as discussed below, can assist in selecting the best alternative.

(2) A significant statistical relationship must exist between the independent and dependent variables in a CER. A statistical method, such as regression analysis, using monthly or quarterly data for each variable, should be used to test the validity of a cost estimating relationship. However, a significant statistical relationship must not be the sole determinant that a particular independent variable will be a valid predictor of a dependent variable. All criteria must be considered when evaluating the effectiveness of a CER to develop reliable and realistic estimates.

(3) Cost estimating relationships used to estimate proposed costs must predict well. Historical data must be collected which will allow the prediction accuracy of each CER to be determined. Evaluation of the historical estimating accuracy of CERs must establish that the parametric estimating system is at least as accurate as a discrete estimating system. Without assurance of their successful use in estimating costs on a repetitive basis, CERs should not be considered acceptable for estimating contract costs.

(4) Data used to establish cost estimating relationships must be verifiable. Since noncost data are usually not submitted or evaluated during traditional price proposal reviews, it may not be readily available. Therefore, contractor information systems may have to be expanded to include records of noncost variables used to develop cost estimating relationships. Data used in developing parametric estimates must be current, accurate, and complete and be reconcilable with source documentation.

(5) Cost estimating relationships must be capable of being monitored on a periodic basis. If a CER is used on a one-time basis, monitoring is not essential, but when CERs are used repeatedly or are included in an FPRA, the capacity for monitoring is critical. Guidelines for monitoring CERs are the same as those for FPRAs included in Part 15.807-5.

90.05-6 Forward Pricing Rate Agreements for Cost Estimating Relationships. When repetitive use of single CERs or parametric cost models is envisioned by the contractor, an FPRA should be established. Procedures for establishing such an FPRA should follow the basic guidelines listed in Part 15.809-3 and should include the following.

a. Timely submission by the contractor, at least yearly, of an adequately supported proposal.

b. Requirement for clear definitions of all elements of cost (dependent variables) which will be developed by the CERs included in the FPRA and the applicable bases (independent variables). Additionally, the proposal must indicate the period of applicability of the proposed CERs and the conditions under which the CERs will be used in price proposals.

c. Evaluation of the proposed FPRA in terms of all the criteria listed in Part 90.05-5b.

d. Tracking of the negotiated CERs and parametric cost models included in the FPRA to test their validity as estimating tools. Guidelines for monitoring FPRAs are included in Part 15.809-5.

90.06 CONTRACT FUNDS STATUS REPORT (CFSR), DD Form 1586

90.06-1 References. DoD Instruction 7000.10, Contract Cost Performance, Funds Status, and Cost/Schedule Status Report.

90.06-2 General

a. The CFSR is designed to supply funding data to program managers for updating and forecasting contract fund requirements, planning and decisionmaking or funding changes in contracts, developing budget estimates, and determining excess funds available for deobligation.

b. The CFSR normally is not required on:

(1) Firm fixed-price contracts unless unpriced portions of such contracts individually or collectively are estimated to be in excess of 20 percent of the initial contract value.

(2) Contracts with a total value less than $100,000.

(3) Contracts expected to be completed in less than 6 months

(4) Facilities contracts.

c. When required, the CFSR is established as a contractual requirement in the DD Form 1423, Contract Data Requirements List for submittal to the purchasing office through the ACO. The level of reporting, frequency, and other instructions relating to the preparation of the report are included in the DD Form 1664, Data Item Description.

90.06-3 Procedures. The ACO will:

a. Be prepared to provide such assistance as may be required in the event the purchasing office requires a CAO onsite examination of the contractor's proposed accounting and management control systems as submitted in response to an RFP.

b. Establish controls to ensure receipt of the CFSR by including a Coded Remark 16 with the applicable date within 25 days following the reporting cutoff date. Quarterly alerts will be provided as described in A-600. If the ACO is not on distribution to receive a copy of the CFSR, he will take the necessary action to ensure that he receives a copy.

c. Forward an advance copy of the CFSR (so marked and without comments) to the PCO, immediately upon receipt from the contractor, unless the CFSR was forwarded directly to the PCO by the contractor.

d. Process the CFSR in accordance with subparagraph 3e below unless the purchasing office specifically indicates that a review is not desired. In these cases, the contract file will be documented to reflect the PCO's determination.

e. Review the current CFSR submitted by the contractor and compare it to prior submissions to determine whether there is a need for a detailed analysis. Some factors that should influence the selection are: significant dollar changes in actual or estimated expenditures; projected overruns or underruns; and significant change or modification activity. Reports selected for detailed review should be submitted to the Financial Services element for analysis in accordance with the applicable field pricing support concepts and procedures of part 15.805.

f. Complete the applicable portions of DLA Form 1069 to record the evaluation of the report. When the Financial Services element is requested to perform an analysis of the CFSR, the price analyst will complete the applicable portions of the DLA Form 1069. (See part 32.7-6.)

90.07 CONTRACTOR COST DATA REPORTING (CCDR)

90.07-1 References.

a. DODI 7000.11, Contractor Cost Data Reporting, 27 Mar 84.

b. "Contractor Cost Data Reporting System," AMCP 715-8, NAVMAT-5241 AFSCP/AFLCP 800-15, 5 Nov 73.

90.07-2 General. While DoDI 7000.11, Contract Cost Data Reporting, provides a detailed explanation of CCDR, a summary is provided below:

a. Two categories of procedures are established in using CCDR. Category I procedures apply to all acquisition programs that are designated as major system acquisitions by the Secretary of Defense or that are estimated to require an eventual total research, development, test, and evaluation expenditure of more than $200 million in constant fiscal year (FY) 1980 dollars or an eventual total procurement expenditure of more than $1 billion in constant FY 1980 dollars. Category II procedures apply to selected contracts or specific line items within category I requirements; generally the data will not be required on contracts of less than $2 million.

b. Each CCDR form will be identified as a single line entry on the DD Form 1423 (CDRL), with the detailed requirements listed in the DD Form 1664.

c. CCDR data requirements are contained in DD Form 1921, Cost Data Summary Report, DD Form 1921-1, Functional Cost-Hour Report, DD Form 1921-2, Progress Curve Report, and DD Form 1921-3, Plant Wide Data Report. All of the CCDR forms will normally be utilized for Category I reporting. For category II reporting, only DD Forms 1921-1 and 1921-2 will normally be utilized. For Acquisition programs falling under the criteria of category I procedures, the DoD component concerned (i.e., the program manager PCO is responsible for preparing the proposed CCDR Plan.

90.07-3 Procedures

a. Requirements for reviews of contractor implementation of CCDR, shall be made annually and, when needed, an audit report will be requested by procurement activities through the cognizant ACO. Audit reviews of CCDR data will be performed by the DCAA.

b. Unless otherwise indicated in the contract, the ACO has the following responsibilities when the CCDR data are contractually required:

(1) Establish controls by including the Coded Remark 16 with applicable date to ensure timely receipt of reports and conformance of submissions to the requirements of the contract. Quarterly alerts will be provided as described in A-600.

(2) Forward a copy of all CCDR submissions to the cognizant office of the DCAA within three days after receipt from the contractor. DoDI 7000.11, paragraph E9, states that the "audit reviews shall consist of (a) an evaluation of the effectiveness of the contractor's policies and procedures to produce data compatible with the objectives of DoDI 7000.11 and the Contractor Cost Data Reporting (CCDR) System, and (b) selective tests of the reported data. Any exceptions will be included with appropriate comment in the audit reports, which shall be issued to the responsible ACO, with a copy to the OSD CAIG and to the designated DoD component official responsible for CCDR." Although CCDR submissions must be forwarded to DCAA, an audit report will not necessarily be prepared for each individual submission unless specifically requested by the ACO.

(3) Forward copies of all audit reports covering CCDR submissions along with appropriate comments by the ACO to the recipient specified in the contract or, if the recipient is not specified in the contract to the PCO within 10 days after receipt of the audit report from DCAA. The ACO's review should consider the application of the reported Work Breakdown Structure elements, the completeness of the CCDR report, and consistency both within and between the CCDR reports. The ACO may obtain assistance from other functional elements if deemed necessary.

90.08 COST PERFORMANCE REPORT (CPR) AND COST/SCHEDULE STATUS REPORT (C/SSR)

90.08-1 General

a. The CPR and C/SSR provide means to collect Summary Level Cost and Schedule Performance Data from contractors for program management purposes.

b. The CPR is intended to provide early identification of problems having significant cost impact, effects of management actions taken to resolve existing problems, and program status information for use in making and validating management decisions. This report is applied to selected contracts within those programs designated as major defense programs.

c. The C/SSR is intended to provide summarized cost and schedule performance data on contracts of $2,000,000 or more and 12 months duration or more which do not use the CPR.

d. Neither the CPR nor the C/SSR will be required on firm fixed-price contracts unless those contracts represent the development or production of a major defense system, a critical component of a major defense system, or involve a program of special interest to the DoD or the Congress.

e. The CPR and C/SSR, whichever is applicable, will be established as a contractual requirement in the DD Form 1423 for submission to the procuring activity.

f. The data reported on the CPR or the C/SSR will pertain to all authorized contract work, including both priced and unpriced effort. Data reported will be limited to level 3 of the contract WBS or higher, except when a problem area is indicated at a lower level of WBS.

90.08-2 Procedure. The ACO will:

a. Be prepared to provide such assistance as may be required in the event the procuring office requires a CAO onsite examination of the contractor's proposed accounting and management control systems as submitted in response to an RFP.

b. Establish controls by including the Coded Remark 16 with applicable date to ensure receipt of the CPR or the C/SSR within 25 days following the reporting cutoff date. Quarterly alerts will be provided as described in A-600.

c. Except as provided in subparagraph d below, review the report submitted by the contractor and obtain an evaluation from the Engineering element and Financial Services relative to the financial data supplied and any adverse impacts upon the contractor's performance, and provide appropriate comments to the office designated in the contract.

d. If the PCO specifically indicates that a review is not desired, forward any reports received promptly to the PCO. The contract file will be documented to reflect the PCO's determination.

e. Request review of selected individual reports by DCAA when appropriate.

90.09 CONTRACT MANAGEMENT NUMBERED LETTERS

90.09-1 Purpose. This part provides information on Contract Management Numbered Letters.

90.09-2 General

a. The purpose of numbered letters is to provide Headquarters policy and informational letters to the journeyman in the field as quickly as and efficiently as possible.

b. Numbered letters will be issued to DCASRs by the Directorate of Contract Management Divisions. The numbering system will identify the Division responsible for the letter and runs consecutively within each Division on a calendar year basis. For example, the first letter issued by the Headquarters Contract Administration Division will be numbered AC-87-1, the second AC-87-2, and so on. Letters that have application to more than one Division will identify the appropriate sequential number for each Division involved.

c. Numbered letters will be issued on blue paper to ensure visibility and expeditious handling. Region distribution of the letters to designated field personnel should also be on blue paper. Numbered letters should be distributed without Region supplementation. This does not apply in the limited situation where there is some unusual circumstance peculiar to the Region requiring supplementation. In these instances, the decision to deviate from this policy should be approved by the Region Commander.

d. Numbered letters shall be circulated to all appropriate Contract Management personnel. Numbered letters should be maintained in notebooks which are readily accessible to all journeymen. Additionally, they may be filed with the appropriate parts of this manual.

90.11 ASSIGNMENT OF CONTRACTS TO BRANCHES AND ACOs

90.11-1 Procedures

a. The Chief of Contract Administration in the DCASMA or DCASPRO is responsible for designating the Branch to administer contracts (when Branches are applicable). The Chief of Contract Administration is further responsible for assigning contracts to ACOs for administration. This authority for assignment may be delegated to Branch or Section Chiefs.

b. With the approval of the region Commander, Branches may be identified by assigning a number or letter and contracts assigned on a specific area basis using contractor's ZIP code or other appropriate and specific criteria. Contracts will be assigned to ACOs within the Contract Branches using similar criteria. However, where a contractor has more than one plant location within a DCASR, an ACO should be designated to handle matters affecting multiplant operations. Similarly, in offices where more than one ACO administers contracts with the same contractor, one ACO should be designated as primary ACO to handle matters affecting overall plant operations.

c. An ACO will be assigned to incoming contracts received for primary administration in accordance with 90.15. ACOs will be assigned to all contracts received for support administration.

d. Since assignments of contracts to ACOs are reflected in the CAR, letters (or forms) of assignment for each contract are a duplication and are not authorized. Guidance regarding ACO cognizance assignments (commodity, ZIP code, number, letter) will be provided DS&FM to enable direct coding at the time of initial review of the contract by the functional element.

e. When determined necessary and in cases of extended absences, an alternate ACO will be designated by the Head of the Contract Administration element to act for the assigned ACO. Alternate ACOs may be designated for a specific period or on a continuing basis until terminated. All actions by the alternate ACO during absence of the assigned ACO will be over his/her signature block, not the signature block of the assigned ACO.

90.12 ASSIGNMENT OF ADMINISTRATIVE CONTRACTING OFFICER CODE

90.12-1 Reference. DLAM 7000.1, Accounting and Finance Manual, chapter 5.

90.12-2 General. A code will be assigned to each ACO for use in relation to the contracts he administers.

90.12-3 Procedures

a. A code is assigned to each ACO to identify the procurement instruments (contracts) which are assigned to him for administration.

b. Any changes or redistribution of contracts should result in immediate notification to DS&FM for mass changes of ACO code identifying the name and code of the ACO being relieved of assignment and the name and code of the ACO receiving the assignment.

90.13 MAINTAINING LIAISON WITH THE PROCURING CONTRACTING OFFICER/PROGRAM MANAGER

90.13-1 General. It is essential that a continuing liaison be maintained between the ACO and the PCO both before and during the life of the contract. It is the responsibility of the ACO to keep the PCO advised of required contract status and potential major problem areas, as he is made aware of the problem or as he is provided advice by other functional elements of the office. *For procurements involving a systems management function, "PCO" will be construed throughout this section to mean both the PCO and the systems manager.* In the event the contract is terminated for convenience, the TCO will be responsible for providing the PCO with status information relating to the terminated contract, or portion thereof, in accordance with DLAM 8110.1. The furnishing of advice to the PCO on required contract status and potential major problem areas will be accomplished promptly.

90.13-2 Procedures

a. *Preaward Phase.* The ACO will assist the PCO, as requested, in supplying both data and personnel for assisting in preaward negotiation or other actions concerning potential contracts. The extent of this service will be influenced by the availability of resources and the relevance of functional areas of responsibility assigned to HQ DLA.

b. *Postaward Phase*

(1) Upon receipt of a newly assigned contract, the contract will be reviewed by the ACO or one of his assistants, depending upon the size, complexity, and relative importance of the procurement, to determine that all of the actions required of the contractor and the CAO are clear and understood. When the ACO determines that the contract has outdated clauses or otherwise has not been prepared in compliance with FAR, he should immediately contact the PCO and bring the inconsistency to his attention. Special provisions and non-FAR clauses observed which may be susceptible to standardization and inclusion in FAR will be submitted to HQ DLA, ATTN: DLA-AC. Examples of special provisions or non-FAR clauses may include those which are duplicated in contracts issued by more than one purchasing activity or those which reflect procuring activities' solutions to procurement problems. When a DD Form 1716, Contract Data Package Recommendation/Deficiency Report, is received from the QA element, the Production element, or DS&FM, the ACO will respond to the DD Form 1716 when authority exists within the CAO to modify the contract to correct the noted deficiency. If such authority has not been delegated to the CAO, the ACO will forward the DD Form 1716 to the PCO for corrective action. A copy of the DD Form 1716 indicating ACO action taken should be provided to the initiator of the form. Where the ACO has notified the PCO of a deficiency in a procurement instrument and it is considered to be a potential or actual problem, action should be taken to correct the deficiency and followup maintained until it is corrected. If the ACO action fails to obtain the correction(s) and the deficiency is considered to be of such substance as to impair contract performance, the matter should be elevated through Command channels. This step should be taken with the underlying motive of providing full support to the PCOs by suggesting ways to improve the purchasing function and eliminate potential problems. In the case of deficiencies in procurement instruments that will not impair contract performance, but nevertheless should be corrected, the ACO will so notify the PCO of the deficiencies but followup action will not be initiated or maintained. As a service organization, the notifications referred to above should be issued to effect corrections for the mutual benefit of the PCO and ACO, and not for situations that the PCO could interpret as only being critical.

(2) Direct contact will be maintained between the purchasing office and the ACO with respect to contract administration. The ACO will ensure that all reports to be prepared by the contractor, in accordance with the terms of the contract, and other authorized reports are properly evaluated and forwarded to the PCO in a timely manner. The ACO will ensure that PCO is kept advised of any actual or potential major problems, such as pending strikes, transportation delays, or production disruptions in the contractor's plants.

(3) In addition to the current contract, the ACO should be mindful of areas for improvement in future contracts. The rapport between the ACO and PCO should be maintained at such a favorable level as to encourage an exchange of ideas which will improve the procuring and administrative aspects of future contractual documents.

(4) If the contract is terminated for convenience, the TCO will be responsible for coordinating with the PCO regarding the terminated contract or portions thereof, as provided in DLAM 8110.1. The ACO should, however, provide the TCO with the necessary information and comments as required.

(5) All matters emanating from the PCO relating to a specific contract will be directed to the ACO. The ACO will then be responsible for coordination with other functional elements in acting upon the request, and will be responsible for the

reply to the PCO. In certain instances, the PCO may communicate with the contractor directly, but a copy of the correspondence must be forwarded to the ACO.

(6) Each situation requires the ACO to use sound judgment and to take timely action in order that the PCO may be in a position to make his decision in a timely manner.

90.13-3 Memorandum of Agreement (MOA). From time to time, the cognizant CAO may be requested to enter into a MOA with project managers or buying offices which specify responsibilities of the CAO and functions to be performed. In the event any DoD agency requests the CAO to enter into an agreement of this nature, they should be advised that the guidance contained in FAR 42.302 and a proper letter of delegation would negate the need for a special memorandum of understanding. Nevertheless, when a MOA cannot be avoided, DCASR Commanders are authorized to sign such agreements. For MOAs under C/SCSC or C/SSR contracts or for Technical Representative MOAs, however, Commanders are also authorized to sign the agreements, but the philosophy is somewhat different. See DLAM 8400.2 for specific policy/procedures in C/SCSC and C/SSR. See DLAR 8300.2 regarding Technical Representation procedures.

90.13-4 Major Weapons Systems/Programs

a. The role of program managers requires them to obtain DCAS services expeditiously and, in most cases, firsthand. It is equally important for the ACO to provide the program managers with one focal point for such services except when a manager elects to contact the PMSO or the functional specialist on matters that do not affect the terms of the contract.

b. When assigned administration of a contract for all or a significant portion of a major weapons system, the DCAS office should consider accomplishing the following actions:

(1) Establish the ACO as a single point of contact for the program manager as well as the PCO.

(2) Examine and prioritize the prime and support contracts that are important to the program manager.

(3) Group the assignment of contracts/contractors of concern to the program managers to a single ACO.

(4) Adjust ACO workloads so that the efforts of the ACO handling the contracts critical to the program manager are not diluted by lesser important contracts that can be routinely handled by other ACOs.

(5) Determine whether the ACO should visit the program manager to describe the services available from the DCAS office.

(6) Invite the program manager to visit the ACO at the contractor's plant to establish rapport.

c. The pressures placed on program managers may be such that certain managers are not fully satisfied unless the total operation is under their control. The existence of this attitude increases the challenge to the ACO to promote techniques in addition to those shown above to bring about an appreciation by the program manager of the services furnished by the ACO.

90.14 COORDINATION OF CONTRACT ADMINISTRATION

90.14-1 General—The ACO and His Team

a. The effective administration of Government contracts requires knowledge and skill in procurement laws, regulations, procedures, price analysis, financial management, systems reviews, negotiation techniques, production, property administration, transportation, packaging, quality assurance, industrial security, and engineering. The ACO is supported by a team of experts, whose collective and individual advice and counsel contribute to the accomplishment of the overall job. With the advice and counsel of these experts, the ACO is able to bring to bear on the problem at hand the knowledge of the best qualified personnel available in the CAO or centralized within the Region. While he utilizes the technical input provided by the team members in making a professional judgment/decision, the ACO, as chief of the team, must make, and take responsibility for, final decisions. Under no conditions can he abdicate this responsibility.

b. To assure that the Government talks to the contractor with one voice, only the ACO can speak on behalf of the Government with respect to the terms and conditions of the contract. Therefore, the multiplicity of experts and technicians whose skills must be periodically or regularly called upon during the life of the contract dictates the need for close cooperation between the ACO and all functional elements.

c. Initial contacts between the contractor and the ACO are of paramount importance since it is at this time that mutual understanding is established upon which administration of the contract will be based. The ACO should diplomatically shape and establish the basic policies and procedures which prevail during the life of the contract. At the earliest opportunity, the contractor should be advised that the ACO and the PCO are the only persons authorized to take the contractual action on behalf of the Government. The ACO's business relations should foster the contractor's belief in the Government's constant good faith and complete sense of equity.

d. As the leader of a team of individual functional experts, the ACO must assure that a concerted effort is made to correct Government or contractor shortcomings which may result in unacceptable contractor performance. If this process does not produce favorable results, the matter should then be escalated to successive levels of management until acceptable results are obtained. Contractors who have continuing unsatisfactory performance or unresolved problems should be considered candidates for the Contractor Improvement Program (CIP). The ACO will fully support CIP (see DLAR 8300.5 and Part 42.6-5(f) of this manual) to help ensure that the necessary contractor improvement is achieved. If there is a DACO, he/she shall furnish the CACO with the following information when a corporate segment is entered into the Contractor Improvement Program: (a) name and address of the corporate segment (b) the name of the Chief Executive Officer of the corporate segment and (c) a brief description of the problem identified.

e. Prior to any meeting with the contractor, the ACO should conduct a meeting with members of the team for the purpose of resolving all differences of opinion, reach a meeting of the minds, and decide upon a definite course of action. Since negotiations result in a commitment which is binding on all participants, the ACO must assure that the advice and recommendations offered by the various talents and disciplines involved in his support are considered and that the results of the negotiations reflect, to the greatest extent practical, the best judgment of all the Government representatives involved. However, the ACO should not relinquish any of his responsibilities or prerogatives in developing his final position and, when warranted, he should not be reluctant to override recommendations of team members. When the ACO exercises this right to make decisions which may be at variance with recommendations received, he should fully document the rationale for his decision.

90.14-2 Procedures

a. Generally, correspondence and inquiries which relate to the functions and responsibilities of the ACO will be forwarded to the ACO assigned to the contract or contractor concerned.

b. Similarly, correspondence and inquiries which relate to the functions and responsibilities of a specific function element will be forwarded to that element for action. In the event subsequent action by the assigned ACO is required, it is the responsibility of the functional element to so advise the ACO and request his action or coordination. In those cases where action by the ACO is required, the functional element will prepare the reply for the signature of the ACO.

c. Replies to correspondence and inquiries which involve two or more functional elements or affect the terms and conditions of the contract will be prepared for the signature of the ACO.

d. Requests for assistance directed to or received from the ACO should be responded to promptly to assure effectiveness and timeliness of action.

90.15 CAR PART B—CONTRACTS FOR MECHANIZED CLOSEOUT

90.15-1 References

a. DLAM 7000.1, Accounting and Finance Manual, chapter 5.
b. DLAM 1745.8 Vol. VI.

90.15-2 Definition

CAR Part B—Contracts for Mechanized Closeout. The prime administration of a firm fixed-price contract or individual order valued at $99,999 or less will be mechanically (automatically) closed out.

90.15-3 General. Firm fixed-price contracts (Kind code 1, Type code J) and orders valued at $99,999 or less will not be assigned to part A of the CAR unless they meet one or more of the requirements listed in 90.15-4 and 90.15-5 below.

90.15-4 DBMS System. The following listed criteria are for the DBMS system only:

(a) Contract Assigned Production Surveillance Category Code 1.
(b) Contract Assigned Property Administration (PA) Code.
(c) Contractor Assigned Small Disadvantaged Business Code N.
(d) Small Business Administration (8a) contract PIIN or SBA PIIN in the R1.
(e) Non-DoD Reimbursement Contract for ACO or multi-function assignment. (R9 Code 01 and appropriate functional limitation Code(s).)
(f) Patent Rights Report Required (R9 Code 02).
(g) Special Tooling Clause (R9 Code 03).
(h) Spares Provisioning (R9 Code 04).
(i) Unpriced Order (R9 Code 06).
(j) Negative Pre Award Survey (R9 Code 42).
(k) First Article/Pre-Production Sample Required (SP Code F).
(l) Contracts terminated for default or convenience (R9 Code 9).
(m) Contract Contains Liquidated Damages Clause (SP Code A).
(n) Progress Payment provisions Special Provision code C except for BOA's and indefinite delivery priced orders under $100,000.
(o) Classified Contract (Security Classification Code C).
(p) DD Form 250 Not Required (Except for Fast Pay) (R9 Code 52).
(q) Prime Admin (Less Payment) "ODO" (R9 Code 54).
(r) Manual Closeout Required by ACO (R9 Code 56).
(s) Contract Requires DD 375, PPR (ACO will have to input R56 to hold in Part A until R9 Code 17 is reprogrammed).

90.15-5 MOCAS 1B System. The criteria for the MOCAS 1B System remains basically the same because the remarks are automatically generated with some exceptions. Codes 15 (Letter Contracts) and 53 (Indefinite Delivery Contracts w/ODSS—CLR) will not be used for Part A assignment. Code 15 is not used in DBMS and should not be used for MOCAS 1B Part A criteria. NOTE: Purification of existing contracts is not required until prior to conversion to DBMS.

a. Special Tooling clause. (03)
b. DD Form 250 not required (except for fast pay). (52)
c. Contracts terminated for default or convenience. (09)
d. Unpriced orders. (06)
e. Prime Administration less payment (ODO). (54)
f. Contracts contain Government-Furnished Property clause. (E)
g. Patent Report required. (02)
h. Spares Provisioning. (04)
i. Contracts contain Liquidated Damages clause. (A)
j. Contracts contain First Article/Preproduction Sample Approval clause. (14)
k. Small Business Administration (8a) contracts. (27)
l. Contracts awarded despite negative preaward survey. (42)
m. Progress payment provision. (C) (except for BOA and indefinite delivery priced orders under $100,000—see paragraph 90.15-6c(2)).
n. When otherwise determined necessary by the ACO to permit manual closeout. ACO will input/Request a manual lock indicator (x) to insure the contract will remain in Part A of the CAR.
o. Contract Requires DD 375, PPR.
p. Quantity Options Expire (05)
q. Research & Development Contracts (07)
r. Service Contracts (11)
s. Economic Price Adjustment (12)
t. Notice of Award (23)
u. Jewel Bearing Clause (43)

90.15-6 Procedures

a. *Part B Contracts.* Reassignment of a part B contract to part A is authorized only in cases where manual closeout actions are required or part B assignment was in error.

b. *Part A Contracts.* If after initial assignment of a contract to part A, based on one of the criteria in paragraph 90.15-3, conditions change such that the criterion is no longer applicable, e.g. a clause is deleted or assignment to part A was in error, the contract may then be moved to part B provided it otherwise satisfies the criterion for part B (for unpriced orders see 16.703-4c(3)). Procedures for receipt, review, distribution, closeout and disposition of part B contracts are shown in part 4.8 and 4.804.

c. *Part B, BOA Orders and Indefinite Delivery Orders.*

(1) When an unpriced order has been definitized by the PCO the order will be reassigned to part B by the ACO, unless the order meets one or more of the other criteria for retention in part A.

(2) Priced orders under $100,000 with no criteria other than the progress payment clause for part A assignment shall be assigned to part B. They shall reamin therein until receipt of an initial progress payment request from the contractor, at which time the ACO can initiate action to move the order into part A, for that order with use of Special Contract Provision "C" (R9-C for MOCAS 1B).

(3) Orders for items which are or have been priced by the ACO will be permanently assigned to CAR part A.

90.16 CONTRACT MANAGEMENT BOARDS OF REVIEW

90.16-1 References

a. DFARS S1-402, CPSR Board.

90.16-2 General. This Part provides guidance regarding the establishment and functions of Contract Management Boards of Review, hereafter also referred to as "Boards of Review" or "Boards."

90.16-3 Establishment of Boards of Review

a. The Region Commander will establish a Board of Review at each DCASR. That Board may review any type of case listed within this Section, and such other types as the Region Commander or the Board Chairperson may determine. (See 90.16-6.)

b. Additionally, the Region Commander may establish subordinate Boards of Review at individual DCASMAs or DCASPROs. These Boards' responsibilities for review may be restricted to certain types of cases, or they may be given all of the DCASR Board's responsibilities. (Ordinarily, where certain functions have been centralized within the DCASR, cases involving those functions should be reviewed only by the DCASR Board.)

c. In deciding whether to establish (or disestablish) a subordinate Board, the Region Commander is to consider the following factors:

(1) The number of cases likely to be brought before the Board.

(2) The number of personnel qualified and otherwise available for membership on the Board (see paragraphs 90.16-4 and 90.16-5).

(3) The amount of travel required of the currently-serving Board's members, as compared to the amount of travel that would be required of the subordinate Board's members.

90.16-4 Composition of the Boards of Review

a. DCASR Board. The Region Commander will appoint a minimum of ten members from within the DCASR; and, will formalize the appointment of the non-voting Advisory DCAA Member, who will be nominated by that Agency. The DCASR members, if possible, are to be GS-13 and above civilians, and O-4 and above officers assigned to the DCASR. Other assigned staff personnel at the GS-12 level, well qualified by virtue of their position, experience, and training, may be selected when necessary to serve as members of the Board. At least two members are to be appointed from outside of the Directorate of Contract Management. Specific appointments to be made are as follows:

(1) Chairperson: Director, Contract Management.

(2) Alternate Chairpersons: Deputy Director, Contract Management and/or Chief, Contract Administration Division.

(3) A member of the Office of Counsel (preferably the Chief of that office).

(4) Board Recorder (may be from any element and may be a non-member of the Board.)

b. DCASMA Board. When such a Board has been authorized, the DCASMA Commander will appoint a minimum of eight members from within the DCASMA; and, will formalize the appointment of the non-voting Advisory DCAA Member, who will be nominated by that Agency. All members should be Branch Chiefs or above, if possible. At least two members are to be appointed from outside of the Division of Contract Management. Specific appointments to be made are as follows:

(1) Chairperson: Chief, Contract Management Division.

(2) Alternate Chairperson (should be a person who has extensive Contract Management experience).

(3) Board Recorder (may be from any element, and may be a non-member of the Board).

c. DCASPRO Board. When such a Board is authorized, the DCASPRO Commander will appoint members to the Board in accordance with subparagraph b. above, except that an Alternate Chairperson need not be appointed, and there need be only five members.

90.16-5 Board Membership Qualifications

a. See paragraph 90.16-4 above concerning the appointment of specified individuals, and certain minimum grade/rank requirements.

b. Proposed Board members should possess the following qualities:

(1) A high degree of objectivity and good judgment.

(2) Broad experience in business and contracting activities (procurement and/or contract administration).

(3) A comprehensive knowledge of the structure and organization of the DoD Contract Administration Services Components, and the interrelationship of the missions and responsibilities of the various functional elements.

c. No person should be appointed to a Board of Review who will have to repeatedly or routinely be excused from reviews because that person was directly involved in the transaction to be reviewed.

90.16-6 Transactions Requiring Board Review. The transactions listed below all require review by the Board *prior to their finalization:* This listing is not necessarily exhaustive; it may be supplemented on a permanent or temporary basis by those persons authorized to issue supplements to this manual, and it may be supplemented on a temporary basis by the individual Board Chairpersons in connection with problem resolution or policy development efforts.

a. Initial CPSR reports, and other CPSR reports that recommend a change in the approval status of a contractor's procurement system. When reviewing CPSR reports, the Board, in the Commander's name, will determine the adequacy of the comments from the Small and Disadvantaged Business Utilization Specialist.

b. Other Cost Accounting Standards Transactions.

(1) Contract price adjustment under the CAS clause where the total negotiated results in an adjustment of $100,000 or more. This includes those contracts where the net increase or decrease is less than $100,000, but the sum of the costs added and deleted equals $100,000 or more.

(2) Home or group office changes which result in an aggregate flowdown to divisions of $500,000 or more.

c. Termination for Convenience settlements, where:

(1) The contract contains a "Termination for the Convenience of the Government" clause dated Apr 73 or later, and the proposed settlement amounts to $250,000 or more.

(2) The contract contains a "Termination for the Convenience of the Government" clause dated prior to Apr 73, and the proposed settlement amounts to $50,000 or more.

(3) The proposed subcontract settlements total $100,000 or more.

(4) The sum total of any of (a) through (d) below *and* the amount of the termination settlement equals $250,000 or more.

(a) Unadjusted contract changes.

(b) Equitable adjustments to the unterminated portion of a partially terminated contract.

(c) Final price for completed articles under completely terminated FPI contracts.

(d) Cancellation charges under multi-year contracts. (See DLAM 8110.1 for the method of computing the dollar thresholds listed above.)

d. Other Contractual Actions.

(1) Contract modifications having a total cost impact of $500,000 or more. This includes those cases in which the net increase or decrease is less than $500,000, but the sum of the added and deleted elements (including indirect costs and profit) totals $500,000 or more. In those cases where repetitive provisioning orders are being placed with a contractor who has a FPRA, Board review is required only for the first order of $500,000 or more; subsequent orders are to be reviewed by the ACO supervisor.

(2) Work requests of $500,000 or more under Overhaul and Maintenance contracts.

(3) Orders of $500,000 or more issued under BOAs. In those cases where repetitive orders are being placed under a BOA governed by fixed prices or rates (labor, overheads, etc.) either set forth in the BOA itself or a separate agreement, Board review is required only for the first order of $500,000 or more; subsequent orders are to be reviewed by the ACO supervisor.

(4) PC&H contracts/modifications of $30,000 or more (see Part 45.608).

(5) Forward Pricing Rate Agreements (see paragraph 15.809-3).

(6) Forward Pricing Rate Recommendations (see paragraph 15.809-4).

(7) Decisions regarding contractors' appeals of disapproved costs (DCAA Forms 1) (see Part 31.2).

(8) Decisions regarding contractors' appeals of Notices of Intent to Disallow or Not Recognize Costs (see Part 42.801).

(9) Suspensions of progress payments when available information indicates that such suspension could adversely affect the contractor's ability to continue performance of the contract (see paragraph 32.5d-8).

(10) Contracting Officer determination (negotiation) of final overhead rates (see paragraph 42.7-11 for requirements for contracts subject to quick closeout procedures.) Where the ACO (or DACO) has responsibility for negotiating only the divisional final overhead rates (the corporate rates and expense allocations having been assigned to a CACO for settlement), the ACO should submit the proposed divisional settlement to the Board without waiting for the corporate expense allocations, particularly if the ACO has any reason to believe that the corporate settlement will be delayed. This will ensure that the Board's advice is pertinent and timely. After such review there will be no requirement to resubmit the divisional overhead rate agreement to the Board, unless the subsequent corporate agreement causes the divisional agreement to be reopened for negotiation.

(11) Advance agreements for IR&D and B&P costs.

(12) Defective pricing adjustments.

e. Plant Clearance Actions.

(1) Determinations to downgrade useable/serviceable property to scrap or salvage if the acquisition cost of the property is $100,000 or more. (Disposals under FAR 45.607 or of property classified

by the contractor as scrap or salvage, when verified by an authorized Government representative, do not require Board review.)

(2) Any sale of property made without competitive bids where the original acquisition cost is $100,000 or more.

(3) A determination to destroy or abandon property (see FAR 45.611) whenever the property has an original acquisition cost of $25,000 or more.

(4) Any transaction involving the disposition of hazardous waste, including property or material contaminated with hazardous material that must be disposed of as hazardous waste, irrespective of acquisition cost.

f. Property Administration Actions.

(1) Initial evaluations of contractors' property control systems when facilities costing $500,000 or more are to be provided to the contractor.

(2) Annual property control system surveys when the total value of property in the contractor's possession is $1,000,000 or more. The property system survey summary shall be furnished to the contractor as quickly as possible, after Board action.

(3) Grants of relief of responsibility for each incident where the actual loss, damage, etc. is $50,000 or more.

g. Any matter, when so requested by the Commander DCASR/DCASMA/DCASPRO, or the concerned functional specialist (e.g., ACO, PLCO, PA, etc.).

h. On occasion, there are changes in policy or law (DoD/DLA policy changes or statements, ASBCA or court decisions, or new legislation recently enacted) that will impact on cases just recently reviewed by the Board. If the contractual action originally contemplated for those cases has not yet been finalized, then those cases are to be returned to the Board for further review and recommendations in light of the changed policy environment.

90.16-7 Documentation Required for Board Case Presentations. The case initiator will normally submit five sets of copies of the following documentation. However, to eliminate excessive duplication or reproduction costs, the number of copies of any item may be varied at the Board's discretion. Where there are questions about the number of required copies, the case initiator should coordinate with the Board Recorder.

a. CPSR Reports, include: a draft of the report.

b. TCO transactions, include:

(1) A memorandum or letter submitting the case.

(2) Termination Notice.

(3) A copy of the contract or subcontract, along with any modifications thereto. (If the number of pages exceeds 20, submit one copy-set instead of five.)

(4) Settlement proposal.

(5) SF 1439, Schedule of Accounting Information, supporting proposals filed on SF 1435. Settlement Proposal (Inventory Basis) SF 1436, Settlement Proposal (Total Cost Basis) or SF 1437, Settlement Proposal for Cost-Reimbursement Type Contracts.

(6) Termination inventory schedules. (If the number of pages exceeds 10, submit one-copy-set instead of five.)

(7) Settlement memorandum, or Contracting Officer's Final Decision. The settlement memorandum is to clearly reflect the disposition of audit recommendations, and is to identify those areas or points on which the TCO and auditor disagree.

(8) Audit Report. In the case of a subcontract settlement, both the contractor's and DCAA's audit reports will be furnished. If a Government audit was performed in lieu of the contractor's, the appropriate exception under FAR 49.107(c) authorizing the substitution is to be identified in the settlement memorandum.

(9) Price/Cost analysis report (if applicable).

(10) Property disposal reports.

(11) A certification from the Property Administrator indicating the status of Government property furnished to or acquired by the contractor under the terminated contract or subcontract.

(12) Engineering and technical reports, if appropriate, pertaining to percentage of physical completion, estimates to complete, allocability determinations, and any other cost element for which technical evaluation was accomplished.

(13) Certificate of Current Cost or Pricing Data, if required. (See DLAM 8110.1.)

(14) Any other data considered essential to a review of the transaction.

c. ACO Transactions, include:

(1) A letter or memorandum submitting the case to the Board.

(2) The proposed Price Negotiation Memorandum. The PNM is to clearly reflect the disposition of audit recommendations, and is to identify those areas or points on which the ACO and auditor disagree.

(3) Contractor's proposal.

(4) Price/Cost analysis report.

(5) Technical evaluation reports.

(6) Audit Report.

(7) Certificate of Current Cost or Pricing Data.

(8) Statement as to legal sufficiency from DCASR Counsel.

(9) Copy of fund certification.

(10) For PC&H contracts, a copy of the specifications and any amendments thereto; and, a copy of each unsuccessful bid or proposal.

(11) The proposal contractual document (e.g., contract modification or PC&H contract), when applicable.

d. Plant Clearance Transactions, include:

(1) A memorandum or letter submitting the case to the Board.

(2) A clear indication as to why the inventory is excess/surplus, including the termination docket number, contract change order number, or other identification, as appropriate.

(3) The extent of screening accomplished and the results thereof, when appropriate.

(4) In cases involving subcontractor inventory referred from another plant clearance activity, a copy of the delegation of plant clearance authority.

(5) If the action involves a sale, information to show that the market has been tested and that the sale should be made at the price and quantity stated, or that the disposition recommended is proper and in the best interests of the Government.

(6) If the action involves destruction or scrapping of inventory due to security classification, evidence that clearly shows that the inventory cannot be declassified for normal disposition. Also, indication is to be made as to whether or not salvable, unclassified components will be removed for reutilization or other disposition prior to destruction.

(7) If disposal action involves inventory located at a subcontractor's plant, the prime contractor's name, address, and prime contract number as well as the name, address, and purchase order number of the subcontractor will be provided.

(8) The written determination required by FAR 45.613, when appropriate, which are to be expanded as necessary to fully clarify the plant clearance officer's decisions. Completed DD Forms 1641, Disposal, Determination/Approval, alone are not considered sufficient for Board review.

(9) A copy of the completed SF 1423, Inventory Verification Report.

(10) A resume of actions taken on the case.

(11) When deemed appropriate, photographs or drawings of the property.

e. Property Administration, include:

(1) A memorandum or letter submitting the case to the Board.

(2) Property System Survey Summary.

(3) Property System Survey work papers.

(4) Other work papers and supporting documentation as necessary to substantiate the proposed action.

90.16-8 Legal Review. The case initiator is to determine on a case-by-case basis whether or not review by DCASR Counsel is necessary and/or warranted. When the determination is made not to seek review by Counsel, a statement to that effect should be included in the presentation to the Board, along with the reasons for not seeking review, i.e., that the action to be reviewed is of a routine, repetitive or noncomplex nature. Where, however, Counsel's review is desired, one complete set of the case documentation (see 90.16-7 above) should be forwarded to the DCASR Counsel in sufficient time so as to allow Counsel to comment prior to submission of the case to the Board. In those cases where DCASR Counsel is represented on the Board of Review, review for legal sufficiency can usually be accomplished simultaneously with the Board's review. (See paragraph 90.16-7d(8).)

90.16-9 General Procedures and Responsibilities

a. The Board is to evaluate the reasonableness and propriety of each submitted transaction. The Board is to be concerned with the merits of the transaction as a whole; the Board should not color or diminish the content of its review by unnecessarily dwelling on a specific feature, or features of the transaction at hand. For example, during the review of a negotiated action, the Board should not concentrate on whether the lowest possible price was obtained to the exclusion of all other factors, e.g., accelerated delivery schedule, superior design features, greater product reliability or durability; but, should instead ascertain whether or not the overall results obtained were most advantageous to the Government.

b. To assure sound and properly documented administration of all Government property, the Board will also examine and evaluate documentation concerned with the administration of Government property in the possession or control of contractors to determine that the actions taken during the system survey were adequate and sound, and that the records are clear, concise and complete. Since Review Board action for Property System Surveys is advisory and not a resurvey of the contractor's system, the recommendations of the Board shall be utilized by the PA in improving the performance of future surveys and surveillance actions.

c. The Board is expected to meet, review the case, and forward its recommendations or opinions in writing to the case initiator within 10 working days after receipt of the case or any supplemental information requested by the Board.

d. The Board's recommendations and opinions, for most cases, are advisory and shall be considered by, but are not binding upon the case initiator. The Board exercises the right of approval only for termination settlements where the contract contains a Termination clause requiring Settlement Review Board approval. (This clause will be found only in contracts issued prior to April 1973.)

e. The Board will arrive at its recommendations or opinions by majority vote. When the Board nonconcurs with the proposed action in a case, the Board's opinion will specifically detail the areas of disagreement, and will supply appropriate guidance and corrective recommendations to the case initiator. All Board members hearing the case will sign the opinion. Those nonconcurring with the majority opinion may so indicate beside their signature.

f. When the Board's opinion is advisory and the case initiator elects not to follow the Board's advice, the case initiator is to reduce to writing his/her reasons for not following the advice, and submit that rationale to his/her supervisor for review prior to taking final action. This documentation will then be filed in the official contract file, and a copy sent to the Board Recorder. (This information may be included in the PNM if the transaction at hand otherwise requires the preparation of a PNM anyway.)

g. The Board Chairperson will determine which of the appointed Board members should be empanelled to hear a particular case or type of case. In making those selections, the Chairperson will consider the type of transaction to be reviewed, e.g., property system survey, CPSR, termination to be reviewed, and the experience and qualifications of the individual Board members relative to that type of case. For example, the Board's legal member should be a member of the review panel whenever a proposed termination settlement is being reviewed; and, the Advisory DCAA member should be on the review panel whenever audit related issues are involved.

h. No Board member should be empanelled to review a case in which that member was a direct participant in the transaction, or where a conflict of interest exists or can be imputed. Individual Board members are responsible for ensuring that the existence of such situations is brought to the Chairperson's attention as soon as possible, so that the member may be excused from the review and an appropriate substitution made.

i. When necessary, due to the unavailability of regularly appointed Board members, or special technical considerations unique to a case, the Chairperson may select non-Board members for the review panel on an *ad hoc* basis, provided that those *ad hoc* members are otherwise well qualified and suitable for regular Board membership.

j. Alternate Chairpersons will assume the Chairperson's duties in his/her absence. Also, because of the scope of the duties and responsibilities assigned to the Chairperson, whenever the Chairperson determines the need, the Chairperson's duties and responsibilities may be partially delegated to the Alternate Chairpersons; and, the Chairperson may establish a separate Board under the purview of an Alternate Chairperson to review a particular case or type of case.

90.16-10 Board Recorder Responsibilities. The Board Recorder is responsible for the following actions:

a. Prompt notification to the Chairperson of each case received for review by the Board.

b. Prompt distribution of a copy of the case documentation to each Board member selected by the Chairperson for the review panel.

c. Notification to the review panel members of the time and place for the Board meeting.

d. Recording the attendance of review panel members.

e. Preparation of the Board of Review meeting minutes. These minutes are to be signed by the Chairperson, each participating member, and the Recorder. The minutes will include the following as a minimum:

(1) Board case number. (May use the termination docket number, plant clearance case number, etc.)

(2) Date of meeting.

(3) Names and organizational codes of participants.

(4) Name of contractor or subcontractor; and, as appropriate, contract number, termination docket number, plant clearance case number, etc.

(5) A resume of the discussion of the Board members.

(6) The final opinion of the Board. Where applicable, the reasons for the Board's nonconcurrence or disapproval will be clearly set forth; as

will be the subsequent conditions to be met, where the Board's concurrence or approval was conditioned on further actions to be taken. The minutes are to also include, where applicable, the Board's recommendations pertaining to the resolution of differences between the contracting officer and the auditor regarding the disposition of contract audit recommendations.

f. Prompt distribution of a copy of the minutes of the Board meeting to each participant and to the case initiator, and to the contract auditor where the case was subject to contract audit followup (see Part 90.01 and paragraph 90.16-6c).

g. Maintenance of a Board Case Register containing the following information:

(1) Date case was received by the Recorder.

(2) Board Case Number. (May use the termination docket number, plant clearance case number, etc.)

(3) Name and organizational code of case initiator.

(4) Contractor's/subcontractor's name and address.

(5) Contract/subcontract number.

(6) Date of Board meeting.

(7) Date minutes of Board meeting were distributed.

(8) Statement of action taken by Board (e.g., approved, disapproved, conditionally approved, etc.).

(9) Statement of action taken by initiator (accepted or rejected advice of Board).

h. Retention of the original Board meeting minutes (signed by each participant); one complete copy-set of the case documentation; and, where applicable, the case initiator's rationale for not following the advice of the Board.

i. Return the remaining copies to the case initiator unless the initiator indicates that none are required, or requests that a lesser number of copies be returned. Copies not returned will be destroyed.

90.16-11 Board Files. The chairperson will ensure that a separate Board case file is retained for each case reviewed by the Board. This file will be a "stand alone" file which will include documents submitted to the Board, Board minutes, rationale supporting the Board's recommendation, and reasons, if applicable, for case initiator nonconcurrence with Board recommendations. The file, identified with a case number, will be tabbed so that individual file documents can be quickly located for later review.

90.17 BASIC EMERGENCY PLAN (BEP)

90.17-1 General. In the event of a prolonged ADPE failure it is essential that high priority functions of the Contract Management Directorate continue to be performed on a manual basis. The following procedures outline in general those manual methods to be implemented at each CAO in the event of a prolonged ADPE failure.

90.17-2 Procedures

a. The latest CAR and CAD including the daily update will be used as the base line and will be annotated to reflect the latest contract assignments.

b. Upon receipt of a new contract or modification the COF element will distribute the documents in accordance with existing prescribed procedures. DS&FM will ensure that data is abstracted from their copy of the contract so that when a computer capability is reestablished the mechanized files may be updated accordingly.

c. The Production element will advise CA by a copy of a CCN card when a contract is physically completed. Similarly, advice will be furnished by DS&FM as to final payment under a contract. When all necessary actions are performed, the ACO may then retire the contract and so annotate his CAR. After notification by the ACO, COF will physically remove all contracts which the ACO indicates should be retired from the active files.

d. If a situation arises whereby it is necessary to change the paying office because the assignment office is disabled, the ACO will request the PCO to amend appropriate contracts to designate the new paying office.

e. The ACO may advise DS&FM that certain contractor invoices for material are deemed critical for the war effort and therefore should be given priority treatment.

90.18 INTERNAL CONTROLS VULNERABILITY ASSESSMENTS

90.18-1 References

a. Federal Managers Financial Integrity Act (PL 97-255).

b. OMB Circular No. A-123 (Revised) Internal Control Systems.

c. DLAR 5010.4, Internal Management Control Program.

90.18-2 The cited references provide direction and guidance to assure that funds, property, and other assigned assets are safeguarded against waste, loss, unauthorized use, misappropriation, or other potential abuse.

90.18-3 Contract Administration areas have been assessed for vulnerablity and high susceptibility to fraud, waste, and abuse based on consideration of the following factors:

a. Inherent Risk—potential for loss of property or cash, improper actions, adverse publicity, etc;

b. Environment—competency of personnel, degree of turnover, extent of training, supervision, overall attitudes;

c. Safeguards—the organizational structure, including separation of duties, written procedures, review cycles physical controls over access to resources.

Based on this assessment, there are no highly vulnerable Contract Administration areas at the Agency-wide level.

90.19 DIMINISHING MANUFACTURING SOURCES AND MATERIAL SHORTAGES (DMSMS) PROGRAM

90.10-1 References

a. DoD Directive 4005.16, Diminishing Manufacturing Sources and Material Shortages Program.

b. DLAR 4005.6, Diminishing Manufacturing Sources and Material Shortages (DMSMS) Program.

90.19-2 General. The DMSMS Program was established by DoD to minimize the impact on development programs, production schedules, or spare parts support capability when a manufacturing or material source is no longer able or willing to provide critical products or materials. The ACO's role is to ensure that information is provided in a timely manner to affected PCOs.

90.19-3 Procedures

a. The primary sources of information for the ACO will be the assigned Industrial Specialist (IS) and QAR. If either of these individuals, during the normal course of duties, learns that a manufacturing or material source has definite plans to cease manufacture of a product line or the providing of necessary Defense materials, they will immediately contact the ACO. The ACO in turn is to advise all affected PCOs so that the DMSMS Focal Points at their respective buying activities may begin taking acquisition and/or planning actions to minimize the effects from the production shutdown.

b. Occasionally, the IS may be contacted directly by the PCO or DMSMS Focal Point and be asked to verify reports of an impending production shutdown. The IS's verification report will be forwarded through the ACO for transmittal to the PCO.

c. The IS may also be requested to identify possible alternate sources. The reports also will be forwarded through the ACO for transmittal to the PCO.

90.20 END USER COMPUTER SYSTEMS APPLICATIONS

90.20-1 General. End user computer resources (e.g., personal computers, etc.) and software applications should be used in support of Contract Administration functions whenever doing so will enhance operational efficiency and effectiveness.

90.20-2 Assistance Available to End Users. An End User Computing Assistance Group (EUCAG) has been established at DCASR Chicago to assist all DCAS end users. The services provided by EUCAG include an electronic Bulletin Board Service (BBS) that lists end user applications that have already been developed, and advice and assistance from EUCAG personnel dedicated to the Contract Management functional areas.

90.20-3 Procedures. To ensure efficient use of time in application development and management, the following procedures shall be used:

a. Before initiating any applications development efforts, end users are to review the EUCAG BBS listing of applications that are already available. The purpose of such a review is to eliminate duplication of effort.

b. After completion of the development of any new application, the application shall be provided to the EUCAG at DCASR Chicago, Attn: Director, Contract Management (DCASR CHI-AU) for listing on the BBS and possible distribution to end users in other activities.

c. A printed copy of the source coding (or macro/instruction set coding for those applications developed for use within "shell" software systems, such as spreadsheets) shall be kept on file for each application. The file should also include documentation on the function of the application, and any operator/user instructions necessary for efficient operation by end users who may be initially unfamiliar with the application.

d. At least one primary and one alternate operator shall be trained on each application put into use within the activity. This will help ensure availability of the application at all times.

e. Backup records shall be maintained and regularly updated for all of the data and information stored in local computer systems. These backup records shall be updated frequently enough to guard against the accidental loss or erasure of critical data or information.

90.21 ADMINISTRATION OF CONTRACTS FOR SHIP CONSTRUCTION AND BOAT BUILDING

90.21-1 Reference

Naval Sea Systems Command (NAVSEA)
Ship Acquisition Contract Administration Manual (SACAM), NAVSEA 0900-LP-079-6010

90.21-2 General

a. Most contracts for ship or boat construction (or their repair or conversion) are issued to contractors under the cognizance of Navy Supervisors of Shipbuilding (SUPSHIPs). However, occasionally, ship/boat construction contracts are issued to contractors under DCAS cognizance. This Part provides guidance for the adminstration of those contracts.

b. The SACAM is the policy and procedural guidance for Navy SUPSHIPs. Reference to the SACAM in this coverage is for information only. In case of conflict between the SACAM and DLA policy and procedures, DLA guidance shall be followed.

c. Delegation Policies. The Administrative Contracting Officer (ACO) should be responsive to the needs of the procuring activity; however, the delegation policies established in FAR/DFARS Subpart 42 and DLAM 8105.1 Section 42.2 shall apply to any proposed delegations of additional functions.

90.21-3 Specialized Technical Assistance.

a. Ship/boat construction contracts may require skills not available in a DCASMA. For Navy contracts, the DCASR is to arrange an agreement with a nearby SUPSHIP to provide the specialized resources needed for administering the contract. If the DCASR is unable to obtain the needed assistance from the SUPSHIP, the matter should be referred to NAVSEA Code 074. Requests for support for Army-issued contracts should be forwarded to the PCO.

b. If necessary, the ACO should convene a conference of the involved Government parties to ensure satisfactory technical assistance arrangements. The ACO should not accept contract administration responsibility if the contract cannot be managed satisfactorily.

90.21-4 Postaward Orientation Conference. A Postaward Orientation Conference is required for each ship/boat construction contract, unless the contractor has recently performed successfully on a contract for similar items.

90.21-5 Contract Administration Plan

a. Upon receipt of a contract for ship/boat construction, the ACO shall, in conjunction with the other members of the contract administration team, prepare a Contract Administration Plan. The plan shall identify all contractual actions required of the Government and the contractor, the date(s) of the required actions, who is responsible for performing Government actions, and how the Government will verify contractor performance. The Contract Administration Plan shall be prepared and coordinated with the Contract Management Chief (as well as the involved functional elements in the DCASMA) prior to the Postaward Conference. The Contract Administration Plan shall not be provided to the contractor. The ACO shall periodically review contract progress with the contract administration team and amend the plan accordingly. Significant changes in resource utilization or other aspects of the plan shall be coordinated with the involved division chiefs.

b. Where a contractor has or is expected to have a series of contracts for similar items, the ACO and contract administration team may establish a written standard operating procedure in lieu of an individual Contract Administration Plan for each contract.

90.21-6 Contract Financing

a. There is no standard FAR/DFARS ship/boat construction progress payments clause. The most common clause used is the NAVSEA "Payments, Liens, and Insurance" clause where progress payments are calculated by applying the percentage of completion of the vessels to the contract price, subject to a ceiling based upon contractor-incurred costs.

b. Percentage of completion reviews shall be accomplished at least quarterly for contractors who would otherwise be placed in Review Category I on the DLA Form 325 (i.e., subject to annual reviews). Contractors who would otherwise be in Category II or III shall be subject to postpayment and prepayment reviews respectively.

c. Ship/boat construction progress payment requests are not prepared on Standard Forms 1443, Contractor's Request for Progress Payment, and accordingly cannot be processed through the automated progress payments system. ACOs shall therefore establish logs for tracking the requests through the payment process and for documenting the amounts approved and paid. ACOs are also responsible for the verification of the accuracy of the request.

d. The procedures in DLAM 8300.1, Production Manual for Contract Administration Services, for the conduct of percentage-of-completion reviews are satisfactory for use on ship/boat construction contracts, provided the contractor's work breakdown structure sufficiently details specific events in the production process. Under no circumstances shall the ACO accept a percentage-of-completion report which uses expenditure of resources (e.g., labor hours or cost incurred) as a measure of contractor progress.

90.21-7 Specifications and Drawings. The NAVSEA SACAM states that the cognizant SUPSHIP will perform certain specification and drawing maintenance effort for the vessels being built. However, such efforts are not a standard CAS function under FAR/DFARS, Part 42, and DCAS offices shall not accept delegations for specification/drawing maintenance. If the issue arises, PCOs should be informed that specification maintenance activity, such as technical review of contractor-prepared drawings, storage and issuance of specification/drawing packages, is a procuring office function.

90.21-8 Cash Sales.

a. The Navy provides, under certain circumstances, for cash sales by a SUPSHIP of Government material to a contractor. However, this is not a normal delegation under Part 42 and DCAS offices shall not accept delegations to perform cash sales to contractors. If a contractor requests such a sale, the matter should be referred to the PCO.

b. While termed a cash sale, these transactions do not result in transfer of title for the material, and the material is accountable as Government property. Therefore, notwithstanding the official Navy policy of not modifying the contract to reflect the cash sale, the ACO should request contractual coverage for the material in order to permit DCAS property administration.

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